

(c) Availability of appropriated funds

Amounts made available under this section shall remain available until expended.

(Pub. L. 102-183, title VIII, § 811, as added Pub. L. 107-306, title III, § 333(b), Nov. 27, 2002, 116 Stat. 2397; amended Pub. L. 108-487, title VI, § 602(b), Dec. 23, 2004, 118 Stat. 3953.)

AMENDMENTS

2004—Subsecs. (b), (c). Pub. L. 108-487 added subsecs. (b) and (c) and struck out heading and text of former subsec. (b). Text read as follows: “Amounts appropriated pursuant to the authorization of appropriations under subsection (a) of this section shall remain available until expended.”

EFFECTIVE DATE

Section effective on the date the Secretary of Defense submits the report required under section 334 of Pub. L. 107-306 and notifies the appropriate committees of Congress that the programs carried out under this chapter are being managed in a fiscally and programmatically sound manner, see section 333(c) of Pub. L. 107-306, set out as an Effective Date of 2002 Amendment note under section 1902 of this title.

§ 1912. Funding for scholarship program for advanced English language studies by heritage community citizens

(a) Funding from Intelligence Community Management Account

In addition to amounts that may be made available to the Secretary under the Fund for a fiscal year, the Director of National Intelligence shall transfer to the Secretary from amounts appropriated for the Intelligence Community Management Account for each fiscal year, beginning with fiscal year 2005, \$2,000,000 to carry out the scholarship programs for English language studies by certain heritage community citizens under section 1902(a)(1)(E) of this title.

(b) Availability of funds

Amounts made available under subsection (a) of this section shall remain available until expended.

(Pub. L. 102-183, title VIII, § 812, as added Pub. L. 108-487, title VI, § 603(b), Dec. 23, 2004, 118 Stat. 3954.)

CHAPTER 38—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY

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CODIFICATION

The Central Intelligence Agency Retirement Act, comprising this chapter, was originally enacted as the Central Intelligence Agency Retirement Act of 1964 for

Certain Employees by Pub. L. 88-643, Oct. 13, 1964, 78 Stat. 1043, as amended by Pub. L. 90-539, Sept. 30, 1968, 82 Stat. 902; Pub. L. 91-185, Dec. 30, 1969, 83 Stat. 847; Pub. L. 91-626, §§ 1-6, Dec. 31, 1970, 84 Stat. 1872-1874; Pub. L. 93-31, May 8, 1973, 87 Stat. 65; Pub. L. 93-210, § 1(a), Dec. 28, 1973, 87 Stat. 908; Pub. L. 94-361, title VIII, § 801(b), July 14, 1976, 90 Stat. 929; Pub. L. 94-522, title I, §§ 101, 102, title II, §§ 201-213, Oct. 17, 1976, 90 Stat. 2467-2471; Ex. Ord. No. 12273, Jan. 16, 1981, 46 F.R. 5854; Ex. Ord. No. 12326, Sept. 30, 1981, 46 F.R. 48889; Pub. L. 97-269, title VI, §§ 602-611, Sept. 27, 1982, 96 Stat. 1145-1148, 1152-1153; Ex. Ord. No. 12443, Sept. 27, 1983, 48 F.R. 44751; Ex. Ord. No. 12485, July 13, 1984, 49 F.R. 28827; Pub. L. 98-618, title III, § 302, Nov. 8, 1984, 98 Stat. 3300; Pub. L. 99-169, title VII, § 702, Dec. 4, 1985, 99 Stat. 1008; Pub. L. 99-335, title V, §§ 501-506, June 6, 1986, 100 Stat. 622-624; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 99-569, title III, § 302(a), Oct. 27, 1986, 100 Stat. 3192; Pub. L. 100-178, title IV, §§ 401(a), 402(a), (b)(1), (2), Dec. 2, 1987, 101 Stat. 1012-1014; Pub. L. 100-453, title III, § 302(a), (b)(1), (c)(1), (d)(1), (2), title V, § 502, Sept. 29, 1988, 102 Stat. 1906, 1907, 1909; Pub. L. 101-193, title III, §§ 302-304(a), 307(b), Nov. 30, 1989, 103 Stat. 1703, 1707; Pub. L. 102-83, § 5(c)(2), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102-88, title III, §§ 302-305(a), 306-307(b), Aug. 14, 1991, 105 Stat. 431-433; Pub. L. 102-183, title III, §§ 302(a)-(c), 303(a), 304-306(b), 307, 309(a), 310(a), Dec. 4, 1991, 105 Stat. 1262-1266; Pub. L. 102-496, title III, § 304(b), Oct. 24, 1992, 106 Stat. 3183, and was set out as a note under section 403 of this title. The Act is shown herein, however, as having been added by Pub. L. 102-496, title VIII, § 802, Oct. 24, 1992, 106 Stat. 3196, without reference to such intervening amendments because of the extensive revision and restatement of the Act's provisions by Pub. L. 102-496.

SUBCHAPTER I—DEFINITIONS

§ 2001. Definitions relating to the system

When used in this chapter:

(1) Agency

The term “Agency” means the Central Intelligence Agency.

(2) Director

The term “Director” means the Director of the Central Intelligence Agency.

(3) Qualifying service

The term “qualifying service” means service determined by the Director to have been performed in carrying out duties described in section 2013 of this title.

(4) Fund balance

The term “fund balance” means the sum of—

(A) the investments of the fund calculated at par value; and

(B) the cash balance of the fund on the books of the Treasury.

(5) Unfunded liability

The term “unfunded liability” means the estimated amount by which—

(A) the present value of all benefits payable from the fund exceeds

(B) the sum of—

(i) the present value of deductions to be withheld from the future basic pay of participants subject to subchapter II of this chapter and of future Agency contributions to be made on the behalf of such participants;

(ii) the present value of Government payments to the fund under sections 2091(c) and 2091(d) of this title; and

(iii) the fund balance as of the date on which the unfunded liability is determined.

(6) Normal cost

The term “normal cost” means the level percentage of payroll required to be deposited in the fund to meet the cost of benefits payable under the system (computed in accordance with generally accepted actuarial practice on an entry-age basis) less the value of retirement benefits earned under another retirement system for government employees and less the cost of credit allowed for military service.

(7) Lump-sum credit

The term “lump-sum credit” means the unrefunded amount consisting of retirement deductions made from a participant's basic pay and amounts deposited by a participant covering earlier service, including any amounts deposited under section 2082(h) of this title.

(8) Congressional intelligence committees

The term “congressional intelligence committees” means the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

(9) Employee

The term “employee” includes an officer of the Agency.

(Pub. L. 88-643, title I, § 101, as added Pub. L. 102-496, title VIII, § 802, Oct. 24, 1992, 106 Stat. 3197; amended Pub. L. 103-178, title II, § 202(a)(1), Dec. 3, 1993, 107 Stat. 2025; Pub. L. 108-458, title I, § 1071(c), Dec. 17, 2004, 118 Stat. 3691.)

PRIOR PROVISIONS

A prior section 101 of Pub. L. 88-643, title I, Oct. 13, 1964, 78 Stat. 1043, provided a short title for Pub. L. 88-643 as the “Central Intelligence Agency Retirement Act of 1964 for Certain Employees” and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88-643 by section 802 of Pub. L. 102-496.

AMENDMENTS

2004—Par. (2). Pub. L. 108-458 added par. (2) and struck out heading and text of former par. (2). Text read as follows: “The term ‘Director’ means the Director of Central Intelligence.”

1993—Par. (7). Pub. L. 103-178 substituted “basic pay and amounts deposited” for “basic pay, amounts deposited” and struck out “, and interest determined under section 2121 of this title” after “section 2082(h) of this title”.

EFFECTIVE DATE OF 2004 AMENDMENT

For Determination by President that amendment by Pub. L. 108-458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.

Amendment by Pub. L. 108-458 effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108-458, set out in an Effective Date of 2004 Amendment; Transition Provisions note under section 401 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 202(b) of Pub. L. 103-178 provided that: “The amendments made by subsection (a) [amending this

section and sections 2011, 2021, 2031, 2032, 2034, 2035, 2051, 2052, 2054, 2071, 2094, 2095, 2131, and 2154 of this title] shall take effect as of February 1, 1993.”

EFFECTIVE DATE

Section 805 of Pub. L. 102-496 provided that: “The amendments made by sections 802 and 803 [enacting this chapter and amending sections 403n, 403r, and 403s of this title, sections 8347 and 8423 of Title 5, Government Organization and Employees, section 1605 of Title 10, Armed Forces, and provisions set out as a note under section 402 of this title] shall take effect on the first day of the fourth month beginning after the date of the enactment of this Act [Oct. 24, 1992].”

EFFECTIVE DATE OF AMENDMENTS TO PUB. L. 88-643 PRIOR TO ENACTMENT OF PUB. L. 102-496

Pub. L. 102-183, title III, §302(d), Dec. 4, 1991, 105 Stat. 1263, provided that: “The amendments made by this section [amending sections 204(b)(3), 221(c)-(e), and 232(c)-(e) of Pub. L. 88-643] shall take effect on the first day of the fourth month beginning after the date of the enactment of this Act [Dec. 4, 1991] and shall apply with respect to annuities payable to children by reason of the death of a participant or annuitant on or after that date.”

Pub. L. 102-183, title III, §303(b), Dec. 4, 1991, 105 Stat. 1264, provided that: “(1) The amendments made by subsection (a) [amending section 221(p)-(r) of Pub. L. 88-643] shall take effect on the first day of the fourth month beginning after the date of the enactment of this Act [Dec. 4, 1991].

“(2)(A) The amendment made by subsection (a)(2) [enacting section 221(q) of Pub. L. 88-643] shall apply with respect to participants and former participants regardless of whether they retire before, on, or after the effective date specified in paragraph (1), except that paragraph (1)(A) of section 221(q) of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (as added by subsection (a)(2)) shall apply only with respect to participants who retire on or after that effective date.

“(B) In applying the provisions of paragraph (1)(B) of section 221(q) of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (as added by subsection (a)(2)) to a participant or former participant who retires before the effective date specified in paragraph (1)—

“(i) the 18-month period referred to in that paragraph shall be considered to begin on the effective date specified in paragraph (1); and

“(ii) the amount referred to in paragraph (2) of that section (as added by subsection (a)(2)) shall be computed without regard to the provisions of subparagraph (B)(ii) of such paragraph (relating to interest).”

Pub. L. 102-183, title III, §306(c), Dec. 4, 1991, 105 Stat. 1265, provided that:

“(1) The amendment made by subsection (a)(1) [amending section 226(a) of Pub. L. 88-643] shall be deemed to have become effective as of September 30, 1990, and shall apply in the case of annuitants whose divorce occurs on or after that date.

“(2) The amendments made by subsections (a)(2) and (a)(3) [amending section 226(a) of Pub. L. 88-643] shall be deemed to have become effective as of September 29, 1988.”

Pub. L. 102-183, title III, §309(b), Dec. 4, 1991, 105 Stat. 1266, provided that: “Subsection (h) of section 304 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees [Pub. L. 88-643], as added by subsection (a), shall be deemed to have become effective as of December 2, 1987.”

Pub. L. 102-183, title III, §310(b), Dec. 4, 1991, 105 Stat. 1267, provided that: “The amendment made by subsection (a) [amending section 204(b)(4) of Pub. L. 88-643] shall apply only to a former husband or wife of a participant or former participant whose divorce from the participant or former participant becomes final after the date of the enactment of this Act [Dec. 4, 1991].”

Pub. L. 102-88, title III, §305(b), Aug. 14, 1991, 105 Stat. 432, provided that:

“(1) The amendments made by subsection (a) [amending sections 221, 222, and 232 of Pub. L. 88-643] relating to widows or widowers shall apply in the case of a surviving spouse's remarriage occurring on or after July 27, 1989, and with respect to periods beginning after such date.

“(2) The amendments made by subsection (a) relating to former spouses shall apply with respect to any former spouse whose remarriage occurs after the date of enactment of this Act [Aug. 14, 1991].”

Amendment by section 307 of Pub. L. 102-88 (amending sections 224 and 225 of Pub. L. 88-643) effective as of Oct. 1, 1990, and no benefits provided pursuant to such amendment to be payable with respect to any period before such date, see section 307(d) of Pub. L. 102-88, set out as an Effective Date of 1991 Amendment note under section 403p of this title.

Pub. L. 101-193, title III, §304(b), Nov. 30, 1989, 103 Stat. 1703, provided that: “The amendment made by this section [amending section 224(a)(2) of Pub. L. 88-643] shall be effective as of October 1, 1986.”

Pub. L. 100-453, title III, §302(b)(2), Sept. 29, 1988, 102 Stat. 1907, provided that: “The amendments made by paragraph (1) [amending section 224 of Pub. L. 88-643] shall take effect as of October 1, 1986.”

Pub. L. 100-453, title III, §302(c)(2), Sept. 29, 1988, 102 Stat. 1907, provided that: “The amendment made by paragraph (1) [amending section 225(a) of Pub. L. 88-643] shall take effect as of December 2, 1987.”

Pub. L. 100-453, title III, §302(d)(3), Sept. 29, 1988, 102 Stat. 1907, provided that: “The amendment made by this subsection [amending section 221(n), (p) of Pub. L. 88-643] shall apply to marriages which occur on or after May 7, 1985.”

Pub. L. 100-178, title IV, §402(c)-(e), Dec. 2, 1987, 101 Stat. 1014, provided that:

“(c)(1) Except as provided in paragraph (2), the amendments made by this section [amending section 403n of this title and sections 221(o)(2), 232(b), and 304 of Pub. L. 88-643] shall take effect on November 15, 1982, the effective date of the Central Intelligence Agency Spouses' Retirement Equity Act of 1982.

“(2) The amendment made by subsection (b)(2) [amending section 304 of Pub. L. 88-643] shall take effect on January 1, 1987, the effective date of the Federal Employees' Retirement System Act of 1986.

“(d) Nothing in this section or any amendment made by this section shall be construed to require the forfeiture by any individual of benefits received before the date of the enactment of this Act [Dec. 2, 1987].

“(e) Nothing in this section or any amendment made by this section shall be construed to require a reduction in the level of benefits received by any individual who was receiving benefits under section 232 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees [Pub. L. 88-643] before the date of enactment of this Act [Dec. 2, 1987].”

Amendment by section 302(a) of Pub. L. 99-569 (enacting section 224 of Pub. L. 88-643) effective Oct. 1, 1986, see section 302(d) of Pub. L. 99-569, set out as an Effective Date of 1986 Amendment note under section 403n of this title.

Pub. L. 97-269, title VI, §613, Sept. 27, 1982, 96 Stat. 1154, provided that:

“(a) Except as provided in subsections (b) and (c) of this section, this title [enacting section 403n of this title and sections 222 and 223 of Pub. L. 88-643 and amending sections 204, 211, 221, 234, and 263 of Pub. L. 88-643] shall take effect on November 15, 1982.

“(b) The provisions of section 222(a) of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees [Pub. L. 88-643], as added by this title, regarding the rights of former spouses to an annuity shall apply in the case of any individual who after the effective date of this title [Nov. 15, 1982] becomes a former spouse of an individual who separates from service with the Agency after such date.

“(c) Except to the extent provided in section 223 of the Central Intelligence Agency Retirement Act of 1964

for Certain Employees [Pub. L. 88-643], the provisions of section 221(b) (as amended by this title) and the provisions of subsections (b) and (c) of section 222 of such Act, as added by this title, regarding the rights of former spouses to receive survivor annuities shall apply in the case of any individual who after the effective date of this title [Nov. 15, 1982] becomes a former spouse of a participant or former participant in the Central Intelligence Agency Retirement and Disability System.”

Pub. L. 94-522, title II, § 215, Oct. 17, 1976, 90 Stat. 2472, provided that:

“(a) This Act [amending Pub. L. 88-643] shall become effective October 1, 1976.

“(b) The amendments made by sections 201(a), (b), (c), and (d), 202, and 208 [amending sections 204(a), (b)(2), (3)(i), 221(b) and 232(b) of Pub. L. 88-643] shall not apply in the case of participants who died before January 8, 1971. The amendments made by section 201(e) [amending section 204 of Pub. L. 88-643] shall not apply in the case of participants who died before April 9, 1974. The rights of such persons and their survivors shall continue in the same manner and to the same extent as if such amendments had not been enacted.

“(c) The amendment made by section 203 [enacting section 221(f)(2) of Pub. L. 88-643] shall apply to a participant who married prior to enactment [Oct. 17, 1976] but only if the election is made within one year after enactment [Oct. 17, 1976].

“(d) The amendment made by section 210 [amending section 251 of Pub. L. 88-643] is effective only with respect to annuity accruing for full months beginning after January 8, 1971; but any part of a period of separation referred to in such amendment in which the participant or former participant was receiving benefits under chapter 81 of title 5, United States Code or any earlier statute on which such chapter is based shall be counted whether the person returns to duty before, on, or after January 8, 1971. With respect to any person retired before such date of enactment, any such part of a period of separation shall be counted only upon application of the retired person.

“(e) The amendment in section 211 [amending section 252(a)(2) of Pub. L. 88-643] to credit certain service in the Public Health Service is effective as of April 8, 1960, and the amendment to credit certain service in the National Oceanic and Atmospheric Administration is effective as of September 14, 1961.

“(f) The amendment in section 212 [enacting section 264 of Pub. L. 88-643] is effective as of June 30, 1974.

“(g) The amendment to recompute a reduced annuity during periods when not married in section 202 [amending section 221(b) of Pub. L. 88-643] shall apply to annuities which commence before, on, or after the date of enactment of this Act [Oct. 17, 1976], but no increase in annuity shall be paid for any period prior to November 1, 1974.

“(h) Annuity increases under sections 204 [enacting section 221(i) of Pub. L. 88-643] and 214 [set out below] shall apply to annuities which commence before, on, or after the date of enactment of this Act [Oct. 17, 1976], but no increase in annuity shall be paid for any period prior to August 1, 1974, or the date on which the annuity commences, whichever is later.”

Pub. L. 93-210, § 1(b), Dec. 28, 1973, 87 Stat. 908, provided that: “The amendments made by subsection (a) [amending section 291(b) of Pub. L. 88-643] shall apply only with respect to annuities which commence on or after July 2, 1973.”

Pub. L. 91-185, § 6, Dec. 30, 1969, 83 Stat. 849, provided that:

“(a) The amendments made by section 1 [amending section 211(a) of Pub. L. 88-643, set out above] shall become effective at the beginning of the first applicable pay period beginning after December 31, 1969.

“(b) The amendments made by sections 3, 4 [amending sections 231(a) and 232(h) of Pub. L. 88-643], and 2 [amending section 221 of Pub. L. 88-643], with the exception of 2(c) [amending subsec. (c) thereof], shall become effective October 20, 1969.

“(c) The amendments made by sections 2(c) and 5 [amending sections 221(c) and 291 of Pub. L. 88-643] shall become effective November 1, 1969.

“(d) The amendments made by sections 2(a), 2(e), 3, and 4(a)(1)-(2) [amending section 221(a), adding section 221(h), and amending sections 231(a) and 232(b) of Pub. L. 88-643] shall not apply in the cases of persons retired or otherwise separated prior to October 20, 1969, and the rights of such persons and their survivors shall continue in the same manner and to the same extent as if such sections had not been enacted.”

SHORT TITLE OF 1993 AMENDMENT

Pub. L. 103-36, § 1, June 8, 1993, 107 Stat. 104, provided that: “This Act [amending section 2053 of this title and enacting provisions set out as a note under section 403-4 of this title] may be cited as the ‘Central Intelligence Agency Voluntary Separation Pay Act.’”

SHORT TITLE OF 1992 AMENDMENT

Section 801 of title VIII of Pub. L. 102-496 provided that: “This title [enacting this chapter, amending sections 403n, 403r, 403r-1, and 403s of this title, sections 8347 and 8423 of Title 5, Government Organization and Employees, section 1605 of Title 10, Armed Forces and sections 4071b to 4071d of Title 22, Foreign Relations and Intercourse, enacting provisions set out as notes under this section, and amending provisions set out as a note under section 402 of this title] may be cited as the ‘CIARDS Technical Corrections Act of 1992.’”

SHORT TITLE OF 1982 AMENDMENT

Pub. L. 97-269, title VI, § 601, Sept. 27, 1982, 96 Stat. 1145, provided that: “This title [enacting section 403n of this title and amending Pub. L. 88-643] may be cited as the ‘Central Intelligence Agency Spouses’ Retirement Equity Act of 1982.’”

SHORT TITLE

Section 1(a) of Pub. L. 88-643, as added by Pub. L. 102-496, title VIII, § 802, Oct. 24, 1992, 106 Stat. 3196, provided that: “This Act [enacting this chapter] may be cited as the ‘Central Intelligence Agency Retirement Act.’”

SAVINGS PROVISION

Section 804 of Pub. L. 102-496 provided that:

“(a) PRIOR ELECTIONS.—Any election made under the Central Intelligence Agency Retirement Act of 1964 for Certain Employees [Pub. L. 88-643 prior to enactment of Pub. L. 102-496, formerly set out as a note under section 403 of this title] before the effective date specified in section 805 [set out as an Effective Date note above] shall not be affected by the amendment made by section 802 [enacting this chapter] and shall be deemed to have been made under the corresponding provision of that Act as restated by section 802 as the Central Intelligence Agency Retirement Act.

“(b) REFERENCES.—Any reference in any other Act, or in any Executive order, rule, or regulation, to the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, or to a provision of that Act, shall be deemed to refer to that Act and to the corresponding provision of that Act, as restated by section 802 as the Central Intelligence Agency Retirement Act.”

FUNDING REQUIREMENTS FOR AMENDMENTS TO PUB. L. 88-643 PRIOR TO ENACTMENT OF PUB. L. 102-496

Pub. L. 100-453, title III, § 302(e), Sept. 29, 1988, 102 Stat. 1907, provided that: “Any new spending authority (within the meaning of section 401(c) of the Congressional Budget Act of 1974 [2 U.S.C. 651(c)]) provided pursuant to the amendments made by this section [enacting section 226 and amending sections 221, 224, and 225 of Pub. L. 88-643] shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriations Acts.”

For provision that any new spending authority (within the meaning of section 401(c) of the Congressional

Budget Act of 1974) provided pursuant to the amendments made to sections 224 and 225 of Pub. L. 88-643 by section 307 of Pub. L. 102-88 be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts, see section 307(c) of Pub. L. 102-88, set out as a Compliance With Budget Act note under section 403p of this title.

CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY FUND; ANNUITY INCREASE PAYMENT; MONTHLY RATE

Pub. L. 94-522, title II, § 214, Oct. 17, 1976, 90 Stat. 2472, provided that:

“(a) An annuity payable from the Central Intelligence Agency Retirement and Disability Fund to an annuitant which is based on a separation occurring prior to October 20, 1969, is increased by \$240 per annum.

“(b) In lieu of any increase based on an increase under subsection (a) of this section, an annuity payable from the Central Intelligence Agency Retirement and Disability Fund to the surviving spouse of an annuitant, which is based on a separation occurring prior to October 20, 1969, shall be increased by \$132 per annum.

“(c) The monthly rate of an annuity resulting from an increase under this section shall be considered as the monthly rate of annuity payable under section 221(a) of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, as amended (78 Stat. 1043; 50 U.S.C. 403 note) [section 221 of Pub. L. 88-643 prior to enactment of Pub. L. 102-496; see 50 U.S.C. 2031(a)] for purposes of computing the minimum annuity under new section 221(l) of the Act, as added by section 204 of this Act.”

TEMPORARY RETIREMENT CONTRIBUTIONS AND PROCEDURES FOR CERTAIN PARTICIPANTS

For temporary provisions providing modified contributions and procedures for officers and employees participating in the Central Intelligence Agency Retirement and Disability System who are also required to pay employment taxes relating to benefits under title II of the Social Security Act, 42 U.S.C. 401 et seq., until they are covered by a new Government retirement system or Jan. 1, 1986, whichever is earlier, see title II of Pub. L. 98-168, set out as a note under section 8331 of Title 5, Government Organization and Employees.

CONTINGENT ONCE-A-YEAR ADJUSTMENT IN ANNUITIES

For provisions which directed the President, subject to certain conditions, to provide for a single cost-of-living adjustment in the annuities paid under the Central Intelligence Agency Retirement Act of 1964 for Certain Employees [Pub. L. 88-643] during the period Sept. 1, 1980, to Aug. 31, 1981, and which further directed that, subject to the enactment of specified legislation providing for the adjustment of annuities paid under section 8331 et seq. of Title 5, Government Organization and Employees, the President exercise the authority vested in him under section 292 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees [Pub. L. 88-643] to provide for cost-of-living adjustments in the annuities paid under that Act on an identical basis, see Pub. L. 96-342, title VIII, § 812(a)(3), (4), (b)(3), (4), (c), Sept. 8, 1980, 94 Stat. 1098, set out as a note under section 1401a of Title 10, Armed Forces.

EXECUTIVE ORDER NO. 11950

Ex. Ord. No. 11950, Jan. 6, 1977, 42 F.R. 1451, conformed Central Intelligence Agency and Civil Service Retirement and Disability Systems with respect to cost of living increases in annuities when there were increases in the price index.

EXECUTIVE ORDER NO. 12023

Ex. Ord. No. 12023, Dec. 1, 1977, 42 F.R. 61443, conformed Central Intelligence Agency and Civil Service Retirement and Disability Systems with regard to allotments or assignments of moneys by annuitants.

EXECUTIVE ORDER NO. 12197

Ex. Ord. No. 12197, Mar. 5, 1980, 45 F.R. 14833, conformed Central Intelligence Agency Retirement and Disability System to amendments to Civil Service Retirement and Disability System with regard to restoration of previously reduced annuities.

EXECUTIVE ORDER NO. 12253

Ex. Ord. No. 12253, Nov. 25, 1980, 45 F.R. 78995, conformed Central Intelligence Agency and Civil Service Retirement and Disability Systems with regard to definition of “dependent”.

EXECUTIVE ORDER NO. 12273

Ex. Ord. No. 12273, Jan. 16, 1981, 46 F.R. 5854, conformed Central Intelligence Agency and Civil Service Retirement and Disability Systems with regard to cost-of-living increases to annuities.

EXECUTIVE ORDER NO. 12326

Ex. Ord. No. 12326, Sept. 30, 1981, 46 F.R. 48889, as amended by Ex. Ord. No. 12443, Sept. 27, 1983, 48 F.R. 44751, conformed Central Intelligence Agency and Civil Service Retirement and Disability Systems with regard to notification of loss or reduction of survivor benefits, computation of annuities, cost-of-living increases, accuracy of information, and withholding of State income tax.

EXECUTIVE ORDER NO. 12443

Ex. Ord. No. 12443, Sept. 27, 1983, 48 F.R. 44751, conformed Central Intelligence Agency and Civil Service Retirement and Disability Systems with regard to restoration of disability retirement annuities, entitlement to and computation and payment of annuities, accuracy of information, and adjustments in amounts.

EXECUTIVE ORDER NO. 12485

Ex. Ord. No. 12485, July 13, 1984, 49 F.R. 28827, conformed Central Intelligence Agency Retirement and Disability System and Civil Service Retirement and Disability System with regard to prior service credit.

EXECUTIVE ORDER NO. 12684

Ex. Ord. No. 12684, July 27, 1989, 54 F.R. 31643, conformed Central Intelligence Agency and Civil Service Retirement and Disability Systems with regard to considering part-time service in computing annuities and remarriage of surviving spouses.

§ 2002. Definitions relating to participants and annuitants

(a) General definitions

When used in subchapter II of this chapter:

(1) Former participant

The term “former participant” means a person who—

(A) while an employee of the Agency was a participant in the system; and

(B) separates from the Agency without entitlement to immediate receipt of an annuity from the fund.

(2) Retired participant

The term “retired participant” means a person who—

(A) while an employee of the Agency was a participant in the system; and

(B) is entitled to receive an annuity from the fund based upon such person’s service as a participant.

(3) Surviving spouse

(A) In general

The term “surviving spouse” means the surviving wife or husband of a participant or

retired participant who (i) was married to the participant or retired participant for at least 9 months immediately preceding the participant's or retired participant's death, or (ii) who is the parent of a child born of the marriage.

(B) Treatment when participant dies less than 9 months after marriage

In a case in which the participant or retired participant dies within the 9-month period beginning on the date of the marriage, the requirement under subparagraph (A)(i) that a marriage have a duration of at least 9 months immediately preceding the death of the participant or retired participant shall be treated as having been met if—

(i) the death of the participant or retired participant was accidental; or

(ii) the surviving wife or husband had been previously married to the participant or retired participant (and subsequently divorced) and the aggregate time married is at least 9 months.

(4) Former spouse

The term “former spouse” means a former wife or husband of a participant, former participant, or retired participant as follows:

(A) Divorces on or before December 4, 1991

In the case of a divorce that became final on or before December 4, 1991, such term means a former wife or husband of a participant, former participant, or retired participant who was married to such participant for not less than 10 years during periods of the participant's creditable service, at least 5 years of which were spent outside the United States by both such participant and former wife or husband during the participant's service as an employee of the Agency.

(B) Divorces after December 4, 1991

In the case of a divorce that becomes final after December 4, 1991, such term means a former wife or husband of a participant, former participant, or retired participant who was married to such participant for not less than 10 years during periods of the participant's creditable service, at least 5 years of which were spent by the participant during the participant's service as an employee of the Agency (i) outside the United States, or (ii) otherwise in a position the duties of which qualified the participant for designation by the Director as a participant under section 2013 of this title.

(C) Creditable service

For purposes of subparagraphs (A) and (B), the term “creditable service” means all periods of a participant's service that are creditable under sections 2081, 2082, and 2083 of this title.

(5) Previous spouse

The term “previous spouse” means an individual who was married for at least 9 months to a participant, former participant, or retired participant who had at least 18 months of service which are creditable under sections 2081, 2082, and 2083 of this title.

(6) Spousal agreement

The term “spousal agreement” means an agreement between a participant, former participant, or retired participant and the participant, former participant, or retired participant's spouse or former spouse that—

(A) is in writing, is signed by the parties, and is notarized;

(B) has not been modified by court order; and

(C) has been authenticated by the Director.

(7) Court order

The term “court order” means—

(A) a court decree of divorce, annulment, or legal separation; or

(B) a court order or court-approved property settlement agreement incident to such court decree of divorce, annulment, or legal separation.

(8) Court

The term “court” means a court of a State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court.

(b) “Child” defined

For purposes of sections 2031 and 2052 of this title:

(1) In general

The term “child” means any of the following:

(A) Minor children

An unmarried dependent child under 18 years of age, including—

(i) an adopted child;

(ii) a stepchild, but only if the stepchild lived with the participant or retired participant in a regular parent-child relationship;

(iii) a recognized natural child; and

(iv) a child who lived with the participant, for whom a petition of adoption was filed by the participant or retired participant, and who is adopted by the surviving spouse after the death of the participant or retired participant.

(B) Disabled adult children

An unmarried dependent child, regardless of age, who is incapable of self-support because of a physical or mental disability incurred before age 18.

(C) Students

An unmarried dependent child between 18 and 22 years of age who is a student regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution.

(2) Special rules for students

(A) Extension of age termination of status as “child”

For purposes of this subsection, a child whose 22nd birthday occurs before July 1 or

after August 31 of a calendar year, and while regularly pursuing such a course of study or training, shall be treated as having attained the age of 22 on the first day of July following that birthday.

(B) Treatment of interim period between school years

A child who is a student is deemed not to have ceased to be a student during an interim between school years if the interim does not exceed 5 months and if the child shows to the satisfaction of the Director that the child has a bona fide intention of continuing to pursue a course of study or training in the same or different school during the school semester (or other period into which the school year is divided) immediately following the interim.

(3) “Dependent” defined

For purposes of this subsection, the term “dependent”, with respect to the child of a participant or retired participant, means that the participant or retired participant was, at the time of the death of the participant or retired participant, either living with or contributing to the support of the child, as determined in accordance with regulations prescribed under subchapter II of this chapter.

(4) Exclusion of stepchildren from lump-sum payment

For purposes of section 2071(c) of this title, the term “child” includes an adopted child and a natural child, but does not include a stepchild.

(Pub. L. 88-643, title I, §102, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3198.)

PRIOR PROVISIONS

A prior section 111 of Pub. L. 88-643, title I, Oct. 13, 1964, 78 Stat. 1043; Pub. L. 94-522, title I, §101, Oct. 17, 1976, 90 Stat. 2467, provided definitions for Pub. L. 88-643 and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88-643 by section 802 of Pub. L. 102-496.

SUBCHAPTER II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

PART A—ESTABLISHMENT OF SYSTEM

§ 2011. CIARDS system

(a) In general

(1) Establishment of system

There is a retirement and disability system for certain employees of the Central Intelligence Agency known as the Central Intelligence Agency Retirement and Disability System (hereinafter in this chapter referred to as the “system”), originally established pursuant to title II of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees.

(2) DCI regulations

The Director shall prescribe regulations for the system. The Director shall submit any proposed regulations for the system to the

congressional intelligence committees not less than 14 days before they take effect.

(b) Administration of system

The Director shall administer the system in accordance with regulations prescribed under this subchapter and with the principles established by this subchapter.

(c) Finality of decisions of DCI

In the interests of the security of the foreign intelligence activities of the United States and in order further to implement section 403-1(i) of this title that the Director of National Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure, and notwithstanding the provisions of chapter 7 of title 5 or any other provision of law (except section 2155(b) of this title), any determination by the Director authorized by this chapter shall be final and conclusive and shall not be subject to review by any court.

(Pub. L. 88-643, title II, §201, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3201; amended Pub. L. 103-178, title II, §202(a)(2), Dec. 3, 1993, 107 Stat. 2026; Pub. L. 105-272, title IV, §403(b), Oct. 20, 1998, 112 Stat. 2404; Pub. L. 108-458, title I, §1072(c), Dec. 17, 2004, 118 Stat. 3693.)

REFERENCES IN TEXT

The Central Intelligence Agency Retirement Act of 1964 for Certain Employees, referred to in subsec. (a)(1), is Pub. L. 88-643, Oct. 13, 1964, 78 Stat. 1043, as amended, which was formerly set out as a note under section 403 of this title. Pub. L. 88-643 was revised generally by Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3196, and is now known as the Central Intelligence Agency Retirement Act. As so revised, title II of Pub. L. 88-643 is classified generally to this subchapter.

PRIOR PROVISIONS

A prior section 201 of Pub. L. 88-643, title II, Oct. 13, 1964, 78 Stat. 1043; Pub. L. 98-618, title III, §302, Nov. 8, 1984, 98 Stat. 3300; Pub. L. 99-335, title V, §501(1), June 6, 1986, 100 Stat. 622, related to rules and regulations and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88-643 by section 802 of Pub. L. 102-496.

AMENDMENTS

2004—Subsec. (c). Pub. L. 108-458 substituted “section 403-1(i) of this title that the Director of National Intelligence” for “paragraph (6) of section 403-3(c) of this title that the Director of Central Intelligence”.

1998—Subsec. (c). Pub. L. 105-272 substituted “paragraph (6) of section 403-3(c) of this title” for “section 403-3(c)(5) of this title”.

1993—Subsec. (c). Pub. L. 103-178 substituted “section 403-3(c)(5) of this title” for “the proviso of section 403(d)(3) of this title”.

EFFECTIVE DATE OF 2004 AMENDMENT

For Determination by President that amendment by Pub. L. 108-458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.

Amendment by Pub. L. 108-458 effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108-458, set out in an Effective Date of 2004 Amendment; Transition Provisions note under section 401 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-178 effective Feb. 1, 1993, see section 202(b) of Pub. L. 103-178, set out as a note under section 2001 of this title.

§ 2012. Central Intelligence Agency Retirement and Disability Fund

The Director shall maintain the fund in the Treasury known as the “Central Intelligence Agency Retirement and Disability Fund” (hereinafter in this chapter referred to as the “fund”), originally created pursuant to title II of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees.

(Pub. L. 88-643, title II, §202, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3201.)

REFERENCES IN TEXT

The Central Intelligence Agency Retirement Act of 1964 for Certain Employees, referred to in text, is Pub. L. 88-643, Oct. 13, 1964, 78 Stat. 1043, as amended, which was formerly set out as a note under section 403 of this title. Pub. L. 88-643 was revised generally by Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3196, and is now known as the Central Intelligence Agency Retirement Act. As so revised, title II of Pub. L. 88-643 is classified generally to this subchapter.

PRIOR PROVISIONS

A prior section 202 of Pub. L. 88-643, title II, Oct. 13, 1964, 78 Stat. 1043, related to establishment and maintenance of the Central Intelligence Agency Retirement and Disability Fund and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88-643 by section 802 of Pub. L. 102-496.

§ 2013. Participants in CIARDS system

(a) Designation of participants

The Director may from time to time designate employees of the Agency who shall be entitled to participate in the system. Employees so designated who elect to participate in the system are referred to in this chapter as “participants”.

(b) Qualifying service

Designation of employees under this section may be made only from among employees of the Agency who have completed at least 5 years of qualifying service. For purposes of this chapter, qualifying service is service in the Agency performed in carrying out duties that are determined by the Director—

(1) to be in support of Agency activities abroad hazardous to life or health; or

(2) to be so specialized because of security requirements as to be clearly distinguishable from normal government employment.

(c) Election of employee to be participant

(1) Permanence of election

An employee of the Agency who elects to accept designation as a participant in the system shall remain a participant of the system for the duration of that individual's employment with the Agency.

(2) Irrevocability of election

Such an election shall be irrevocable except as and to the extent provided in section 2151(d) of this title.

(3) Election not subject to approval

An election under this section is not subject to review or approval by the Director.

(Pub. L. 88-643, title II, §203, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3202.)

PRIOR PROVISIONS

A prior section 203 of Pub. L. 88-643, title II, Oct. 13, 1964, 78 Stat. 1044; Pub. L. 102-88, title III, §303, Aug. 14, 1991, 105 Stat. 431, related to participants in the system and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88-643 by section 802 of Pub. L. 102-496.

§ 2014. Annuitants

Persons who are annuitants under the system are—

(1) those persons who, on the basis of their service in the Agency, have met all requirements for an annuity under this subchapter or any other Act and are receiving an annuity from the fund; and

(2) those persons who, on the basis of someone else's service, meet all the requirements under this subchapter or any other Act for an annuity payable from the fund.

(Pub. L. 88-643, title II, §204, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3202.)

PRIOR PROVISIONS

A prior section 204 of Pub. L. 88-643, title II, Oct. 13, 1964, 78 Stat. 1044; Pub. L. 91-626, §1, Dec. 31, 1970, 84 Stat. 1872; Pub. L. 94-552, title II, §201, Oct. 17, 1976, 90 Stat. 2468; Pub. L. 97-269, title VI, §602, Sept. 27, 1982, 96 Stat. 1145; Pub. L. 99-335, title V, §501(2), June 6, 1986, 100 Stat. 622; Pub. L. 102-88, title III, §302, Aug. 14, 1991, 105 Stat. 431; Pub. L. 102-183, title III, §§302(c), 310(a), Dec. 4, 1991, 105 Stat. 1263, 1266, related to annuitants under the system and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88-643 by section 802 of Pub. L. 102-496.

PART B—CONTRIBUTIONS

§ 2021. Contributions to fund

(a) In general

(1) Participant's contributions

Except as provided in subsection (d) of this section, 7 percent of the basic pay received by a participant for any pay period shall be deducted and withheld from the pay of that participant and contributed to the fund.

(2) Agency contributions

An equal amount shall be contributed to the fund for that pay period from the appropriation or fund which is used for payment of the participant's basic pay.

(3) Deposits to the fund

The amounts deducted and withheld from basic pay, together with the amounts so contributed from the appropriation or fund, shall be deposited by the Director to the credit of the fund.

(b) Consent of participant to deductions from pay

Each participant shall be deemed to consent and agree to such deductions from basic pay, and payment less such deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for all regular

services during the period covered by such payment, except the right to the benefits to which the participant is entitled under this subchapter, notwithstanding any law, rule, or regulation affecting the individual's pay.

(c) Treatment of contributions after 35 years of service

(1) Accrual of interest

Amounts deducted and withheld from the basic pay of a participant under this section for pay periods after the first day of the first pay period beginning after the day on which the participant completes 35 years of creditable service computed under sections 2081 and 2082 of this title (excluding service credit for unused sick leave under section 2031(a)(2) of this title) shall accrue interest. Such interest shall accrue at the rate of 3 percent a year through December 31, 1984, and thereafter at the rate computed under section 8334(e) of title 5, and shall be compounded annually from the date on which the amount is so deducted and withheld until the date of the participant's retirement or death.

(2) Use of amounts withheld after 35 years of service

(A) Use for deposits due under section 2082(b)

Amounts described in paragraph (1), including interest accrued on such amounts, shall be applied upon the participant's retirement or death toward any deposit due under section 2082(b) of this title.

(B) Lump-sum payment

Any balance of such amounts not so required for such a deposit shall be refunded to the participant in a lump sum after the participant's separation (or, in the event of a death in service, to a beneficiary in order of precedence specified in subsection¹ 2071(c) of this title), subject to prior notification of a current spouse, if any, unless the participant establishes to the satisfaction of the Director, in accordance with regulations which the Director may prescribe, that the participant does not know, and has taken all reasonable steps to determine, the whereabouts of the current spouse.

(C) Purchases of additional elective benefits

In lieu of such a lump-sum payment, the participant may use such amounts—

(i) to purchase an additional annuity in accordance with section 2121 of this title; or

(ii) provide any additional survivor benefit for a current or former spouse or spouses.

(d) Offset for social security taxes

(1) Persons covered

In the case of a participant who was a participant subject to this subchapter before January 1, 1984, and whose service—

(A) is employment for the purposes of title II of the Social Security Act [42 U.S.C. 401 et seq.] and chapter 21 of title 42, and

(B) is not creditable service for any purpose under subchapter III of this chapter or chapter 84 of title 5,

there shall be deducted and withheld from the basic pay of the participant under this section during any pay period only the amount computed under paragraph (2).

(2) Reduction in contribution

The amount deducted and withheld from the basic pay of a participant during any pay period pursuant to paragraph (1) shall be the excess of—

(A) the amount determined by multiplying the percent applicable to the participant under subsection (a) of this section by the basic pay payable to the participant for that pay period, over

(B) the amount of the taxes deducted and withheld from such basic pay under section 3101(a) of title 26 (relating to old-age, survivors, and disability insurance) for that pay period.

(Pub. L. 88-643, title II, §211, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3202; amended Pub. L. 103-178, title II, §202(a)(3), Dec. 3, 1993, 107 Stat. 2026.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d)(1)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 211 of Pub. L. 88-643, title II, Oct. 13, 1964, 78 Stat. 1045; Pub. L. 91-185, §1, Dec. 30, 1969, 83 Stat. 847; Pub. L. 97-269, title VI, §611, Sept. 27, 1982, 96 Stat. 1153; Pub. L. 99-335, title V, §§501(2), 502, June 6, 1986, 100 Stat. 622, 623; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, related to compulsory contributions to the fund and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88-643 by section 802 of Pub. L. 102-496.

AMENDMENTS

1993—Subsec. (c)(2)(B). Pub. L. 103-178 substituted “prior notification of a current spouse, if any, unless the participant establishes to the satisfaction of the Director, in accordance with regulations which the Director may prescribe, that the participant does not know, and has taken all reasonable steps to determine, the whereabouts of the current spouse” for “the requirement under section 2071(b)(4) of this title”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-178 effective Feb. 1, 1993, see section 202(b) of Pub. L. 103-178, set out as a note under section 2001 of this title.

TEMPORARY ADJUSTMENT OF CONTRIBUTION LEVELS

Pub. L. 106-346, §101(a) [title V, §505(g)], Oct. 23, 2000, 114 Stat. 1356, 1356A-54, provided that: “Notwithstanding section 211(a)(2) of the Central Intelligence Agency Retirement Act (50 U.S.C. 2021(a)(2)), during the period beginning on October 1, 2002, through December 31, 2002, the Central Intelligence Agency shall contribute 7.5 percent of the basic pay of an employee participating in the Central Intelligence Agency Retirement and Disability System in lieu of the agency contribution otherwise required under section 211(a)(2) of such Act.”

Pub. L. 105-33, title VII, §7001(c)(1), (2), Aug. 5, 1997, 111 Stat. 658, as amended by Pub. L. 106-346, §101(a)

¹ So in original. Probably should be “section”.

[title V, § 505(c)(1)], Oct. 23, 2000, 114 Stat. 1356, 1356A–53, provided that:

“(1) AGENCY CONTRIBUTIONS.—Notwithstanding section 211(a)(2) of the Central Intelligence Agency Retirement Act (50 U.S.C. 2021(a)(2)), during the period beginning on October 1, 1997, through September 30, 2002, the Central Intelligence Agency shall contribute 8.51 percent of the basic pay of an employee participating in the Central Intelligence Agency Retirement and Disability System in lieu of the agency contribution otherwise required under section 211(a)(2) of such Act.

“(2) INDIVIDUAL DEDUCTIONS, WITHHOLDINGS, AND DEPOSITS.—Notwithstanding section 211(a)(1) of the Central Intelligence Agency Retirement Act (50 U.S.C. 2021(a)(1)) beginning on January 1, 1999, through December 31, 2000, the percentage deducted and withheld from the basic pay of an employee participating in the Central Intelligence Agency Retirement and Disability System shall be as follows:

7.25	January 1, 1999, to December 31, 1999.
7.4	January 1, 2000, to December 31, 2000.”

PART C—COMPUTATION OF ANNUITIES

§ 2031. Computation of annuities

(a) Annuity of participant

(1) Computation of annuity

The annuity of a participant is the product of—

- (A) the participant’s high-3 average pay (as defined in paragraph (4)); and
- (B) the number of years, not exceeding 35, of service credit (determined in accordance with sections 2081 and 2082 of this title) multiplied by 2 percent.

(2) Credit for unused sick leave

The total service of a participant who retires on an immediate annuity (except under section 2051 of this title) or who dies leaving a survivor or survivors entitled to an annuity shall include (without regard to the 35-year limitation prescribed in paragraph (1)) the days of unused sick leave to the credit of the participant. Days of unused sick leave may not be counted in determining average basic pay or eligibility for an annuity under this subchapter. A deposit shall not be required for days of unused sick leave credited under this paragraph.

(3) Crediting of part-time service

(A) In general

In the case of a participant whose service includes service on a part-time basis performed after April 6, 1986, the participant’s annuity shall be the sum of the amounts determined under subparagraphs (B) and (C).

(B) Computation of pre-April 7, 1986, annuity

The portion of an annuity referred to in subparagraph (A) with respect to service before April 7, 1986, shall be the amount computed under paragraph (1) using the participant’s length of service before that date (increased by the unused sick leave to the credit of the participant at the time of retirement) and the participant’s high-3 average pay.

(C) Computation of post-April 6, 1986, annuity

The portion of an annuity referred to in subparagraph (A) with respect to service after April 6, 1986, shall be the product of—

- (i) the amount computed under paragraph (1), using the participant’s length of service after that date and the participant’s high-3 average pay, as determined by using the annual rate of basic pay that would be payable for full-time service; and
- (ii) the ratio which the participant’s actual service after April 6, 1986 (as determined by prorating the participant’s total service after that date to reflect the service that was performed on a part-time basis) bears to the total service after that date that would be creditable for the participant if all the service had been performed on a full-time basis.

(D) Treatment of employment on temporary or intermittent basis

Employment on a temporary or intermittent basis shall not be considered to be service on a part-time basis for purposes of this paragraph.

(4) High-3 average pay defined

For purposes of this subsection, a participant’s high-3 average pay is the amount of the participant’s average basic pay for the highest 3 consecutive years of the participant’s service for which full contributions have been made to the fund.

(5) Computation of service

In determining the aggregate period of service upon which an annuity is to be based, any fractional part of a month shall not be counted.

(b) Spouse or former spouse survivor annuity

(1) Reduction in participant’s annuity to provide spouse or former spouse survivor annuity

(A) General rule

Except to the extent provided otherwise under a written election under subparagraph (B) or (C), if at the time of retirement a participant or former participant is married (or has a former spouse who has not remarried before attaining age 55), the participant shall receive a reduced annuity and provide a survivor annuity for the participant’s spouse under this subsection or former spouse under section 2032(b) of this title, or a combination of such annuities, as the case may be.

(B) Joint election for waiver or reduction of spouse survivor annuity

A married participant or former participant and the participant’s spouse may jointly elect in writing at the time of retirement to waive a survivor annuity for that spouse under this section or to reduce such survivor annuity under this section by designating a portion of the annuity of the participant as the base for the survivor annuity. If the marriage is dissolved following an election for such a reduced annuity and the spouse

qualifies as a former spouse, the base used in calculating any annuity of the former spouse under section 2032(b) of this title may not exceed the portion of the participant's annuity designated under this subparagraph.

(C) Joint election of participant and former spouse

If a participant or former participant has a former spouse, such participant and the participant's former spouse may jointly elect by spousal agreement under section 2094(b) of this title to waive, reduce, or increase a survivor annuity under section 2032(b) of this title for that former spouse. Any such election must be made (i) before the end of the 12-month period beginning on the date on which the divorce or annulment involving that former spouse becomes final, or (ii) at the time of retirement of the participant, whichever is later.

(D) Unilateral elections in absence of spouse or former spouse

The Director may prescribe regulations under which a participant or former participant may make an election under subparagraph (B) or (C) without the participant's spouse or former spouse if the participant establishes to the satisfaction of the Director that the participant does not know, and has taken all reasonable steps to determine, the whereabouts of the spouse or former spouse.

(2) Amount of reduction in participant's annuity

The annuity of a participant or former participant providing a survivor annuity under this section (or section 2032(b) of this title), excluding any portion of the annuity not designated or committed as a base for any survivor annuity, shall be reduced by 2½ percent of the first \$3,600 plus 10 percent of any amount over \$3,600. The reduction under this paragraph shall be calculated before any reduction under section 2032(a)(5) of this title.

(3) Amount of surviving spouse annuity

(A) In general

If a retired participant receiving a reduced annuity under this subsection dies and is survived by a spouse, a survivor annuity shall be paid to the surviving spouse. The amount of the annuity shall be equal to 55 percent of (i) the full amount of the participant's annuity computed under subsection (a) of this section, or (ii) any lesser amount elected as the base for the survivor annuity under paragraph (1)(B).

(B) Limitation

Notwithstanding subparagraph (A), the amount of the annuity calculated under subparagraph (A) for a surviving spouse in any case in which there is also a surviving former spouse of the retired participant who qualifies for an annuity under section 2032(b) of this title may not exceed 55 percent of the portion (if any) of the base for survivor annuities which remains available under section 2032(b)(4)(B) of this title.

(C) Effective date and termination of annuity

An annuity payable from the fund to a surviving spouse under this paragraph shall commence on the day after the retired participant dies and shall terminate on the last day of the month before the surviving spouse's death or remarriage before attaining age 55. If such survivor annuity is terminated because of remarriage, it shall be restored at the same rate commencing on the date such remarriage is dissolved by death, annulment, or divorce if any lump sum paid upon termination of the annuity is returned to the fund.

(c) 18-month open period after retirement to provide spouse coverage

(1) Survivor annuity elections

(A) Election when spouse coverage waived at time of retirement

A participant or former participant who retires after March 31, 1992 and who—

(i) is married at the time of retirement; and

(ii) elects at that time (in accordance with subsection (b) of this section) to waive a survivor annuity for the spouse,

may, during the 18-month period beginning on the date of the retirement of the participant, elect to have a reduction under subsection (b) of this section made in the annuity of the participant (or in such portion thereof as the participant may designate) in order to provide a survivor annuity for the participant's spouse.

(B) Election when reduced spouse annuity elected

A participant or former participant who retires after March 31, 1992, and—

(i) who, at the time of retirement, is married, and

(ii) who, at that time designates (in accordance with subsection (b) of this section) that a portion of the annuity of such participant is to be used as the base for a survivor annuity,

may, during the 18-month period beginning on the date of the retirement of such participant, elect to have a greater portion of the annuity of such participant so used.

(2) Deposit required

(A) Requirement

An election under paragraph (1) shall not be effective unless the amount specified in subparagraph (B) is deposited into the fund before the end of that 18-month period.

(B) Amount of deposit

The amount to be deposited with respect to an election under this subsection is the amount equal to the sum of the following:

(i) Additional cost to system

The additional cost to the system that is associated with providing a survivor annuity under subsection (b) of this section and that results from such election, taking into account—

(I) the difference (for the period between the date on which the annuity of the participant or former participant commences and the date of the election) between the amount paid to such participant or former participant under this subchapter and the amount which would have been paid if such election had been made at the time the participant or former participant applied for the annuity; and

(II) the costs associated with providing for the later election.

(ii) Interest

Interest on the additional cost determined under clause (i), computed using the interest rate specified or determined under section 8334(e) of title 5 for the calendar year in which the amount to be deposited is determined.

(3) Voiding of previous elections

An election by a participant or former participant under this subsection voids prospectively any election previously made in the case of such participant under subsection (b) of this section.

(4) Reductions in annuity

An annuity that is reduced in connection with an election under this subsection shall be reduced by the same percentage reductions as were in effect at the time of the retirement of the participant or former participant whose annuity is so reduced.

(5) Rights and obligations resulting from reduced annuity election

Rights and obligations resulting from the election of a reduced annuity under this subsection shall be the same as the rights and obligations that would have resulted had the participant involved elected such annuity at the time of retirement.

(d) Annuities for surviving children

(1) Participants dying before April 1, 1992

In the case of a retired participant who died before April 1, 1992, and who is survived by a child or children—

(A) if the retired participant was survived by a spouse, there shall be paid from the fund to or on behalf of each such surviving child an annuity determined under paragraph (3)(A); and

(B) if the retired participant was not survived by a spouse, there shall be paid from the fund to or on behalf of each such surviving child an annuity determined under paragraph (3)(B).

(2) Participants dying on or after April 1, 1992

In the case of a retired participant who dies on or after April 1, 1992, and who is survived by a child or children—

(A) if the retired participant is survived by a spouse or former spouse who is the natural or adoptive parent of a surviving child of the participant, there shall be paid from the fund to or on behalf of each such surviving child an annuity determined under paragraph (3)(A); and

(B) if the retired participant is not survived by a spouse or former spouse who is the natural or adoptive parent of a surviving child of the participant, there shall be paid to or on behalf of each such surviving child an annuity determined under paragraph (3)(B).

(3) Amount of annuity

(A) The annual amount of an annuity for the surviving child of a participant covered by paragraph (1)(A) or (2)(A) of this subsection (or covered by paragraph (1)(A) or (2)(A) of section 2052(c) of this title) is the smallest of the following:

(i) 60 percent of the participant's high-3 average pay, as determined under subsection (a)(4) of this section, divided by the number of children.

(ii) \$900, as adjusted under section 2131 of this title.

(iii) \$2,700, as adjusted under section 2131 of this title, divided by the number of children.

(B) The amount of an annuity for the surviving child of a participant covered by paragraph (1)(B) or (2)(B) of this subsection (or covered by paragraph (1)(B) or (2)(B) of section 2052(c) of this title) is the smallest of the following:

(i) 75 percent of the participant's high-3 average pay, as determined under subsection (a)(4) of this section, divided by the number of children.

(ii) \$1,080, as adjusted under section 2131 of this title.

(iii) \$3,240, as adjusted under section 2131 of this title, divided by the number of children.

(4) Recomputation of child annuities

(A) In the case of a child annuity payable under paragraph (1), upon the death of a surviving spouse or the termination of the annuity of a child, the annuities of any remaining children shall be recomputed and paid as though the spouse or child had not survived the retired participant.

(B) In the case of a child annuity payable under paragraph (2), upon the death of a surviving spouse or former spouse or termination of the annuity of a child, the annuities of any remaining children shall be recomputed and paid as though the spouse, former spouse, or child had not survived the retired participant. If the annuity of a surviving child who has not been receiving an annuity is initiated or resumed, the annuities of any other children shall be recomputed and paid from that date as though the annuities of all currently eligible children were then being initiated.

(5) "Former spouse" defined

For purposes of this subsection, the term "former spouse" includes any former wife or husband of the retired participant, regardless of the length of marriage or the amount of creditable service completed by the participant.

(e) Commencement and termination of child annuities

(1) Commencement

An annuity payable to a child under subsection (d) of this section, or under section

2052(c) of this title, shall begin on the day after the date on which the participant or retired participant dies or, in the case of an individual over the age of 18 who is not a child within the meaning of section 2002(b) of this title, shall begin or resume on the first day of the month in which the individual later becomes or again becomes a student as described in section 2002(b) of this title. Such annuity may not commence until any lump-sum that has been paid is returned to the fund.

(2) Termination

Such an annuity shall terminate on the last day of the month before the month in which the recipient of the annuity dies or no longer qualifies as a child (as defined in section 2002(b) of this title).

(f) Participants not married at time of retirement

(1) Designation of persons with insurable interest

(A) Authority to make designation

Subject to the rights of former spouses under subsection (b) of this section and section 2032 of this title, at the time of retirement an unmarried participant found by the Director to be in good health may elect to receive an annuity reduced in accordance with subparagraph (B) and designate in writing an individual having an insurable interest in the participant to receive an annuity under the system after the participant's death. The amount of such an annuity shall be equal to 55 percent of the participant's reduced annuity.

(B) Reduction in participant's annuity

The annuity payable to the participant making such election shall be reduced by 10 percent of an annuity computed under subsection (a) of this section and by an additional 5 percent for each full 5 years the designated individual is younger than the participant. The total reduction under this subparagraph may not exceed 40 percent.

(C) Commencement of survivor annuity

The annuity payable to the designated individual shall begin on the day after the retired participant dies and terminate on the last day of the month before the designated individual dies.

(D) Recomputation of participant's annuity on death of designated individual

An annuity which is reduced under this paragraph shall, effective the first day of the month following the death of the designated individual, be recomputed and paid as if the annuity had not been so reduced.

(2) Election of survivor annuity upon subsequent marriage

A participant who is unmarried at the time of retirement and who later marries may irrevocably elect, in a signed writing received by the Director within one year after the marriage, to receive a reduced annuity as provided in subsection (b) of this section. Such election and reduction shall be effective on the first

day of the month beginning 9 months after the date of marriage. The election voids prospectively any election previously made under paragraph (1).

(g) Effect of divorce after retirement

(1) Recomputation of retired participant's annuity upon divorce

An annuity which is reduced under this section (or any similar prior provision of law) to provide a survivor annuity for a spouse shall, if the marriage of the retired participant to such spouse is dissolved, be recomputed and paid for each full month during which a retired participant is not married (or is remarried, if there is no election in effect under paragraph (2)) as if the annuity had not been so reduced, subject to any reduction required to provide a survivor annuity under subsection (b) or (c) of section 2032 of this title or under section 2036 of this title.

(2) Election of survivor annuity upon subsequent remarriage

(A) In general

Upon remarriage, the retired participant may irrevocably elect, by means of a signed writing received by the Director within one year after such remarriage, to receive a reduced annuity for the purpose of providing an annuity for the new spouse of the retired participant in the event such spouse survives the retired participant. Such reduction shall be equal to the reduction in effect immediately before the dissolution of the previous marriage (unless such reduction is adjusted under section 2032(b)(5) of this title or elected under subparagraph (B)).

(B) When annuity previously not (or not fully) reduced

(i) Election

If the retired participant's annuity was not reduced (or was not fully reduced) to provide a survivor annuity for the participant's spouse or former spouse as of the time of retirement, the retired participant may make an election under the first sentence of subparagraph (A) upon remarriage to a spouse other than the spouse at the time of retirement. For any remarriage that occurred before August 14, 1991, the retired participant may make such an election within 2 years after such date.

(ii) Deposit required

(I) The retired participant shall, within one year after the date of the remarriage (or by August 14, 1993 for any remarriage that occurred before August 14, 1991), deposit in the fund an amount determined by the Director, as nearly as may be administratively feasible, to reflect the amount by which the retired participant's annuity would have been reduced if the election had been in effect since the date the annuity commenced, plus interest.

(II) The annual rate of interest for each year during which the retired participant's annuity would have been reduced if the election had been in effect since the date the annuity commenced shall be 6 percent.

(III) If the retired participant does not make the deposit, the Director shall collect such amount by offset against the participant's annuity, up to a maximum of 25 percent of the net annuity otherwise payable to the retired participant, and the retired participant is deemed to consent to such offset.

(IV) The deposit required by this subparagraph may be made by the surviving spouse of the retired participant.

(C) Effects of election

An election under this paragraph and the reduction in the participant's annuity shall be effective on the first day of the month beginning 9 months after the date of remarriage. A survivor annuity elected under this paragraph shall be treated in all respects as a survivor annuity under subsection (b) of this section.

(h) Coordination of annuities

(1) Surviving spouse

A surviving spouse whose survivor annuity was terminated because of remarriage before attaining age 55 shall not be entitled under subsection (b)(3)(C) of this section to the restoration of that survivor annuity payable from the fund unless the surviving spouse elects to receive it instead of any other survivor annuity to which the surviving spouse may be entitled under the system or any other retirement system for Government employees by reason of the remarriage.

(2) Former spouse

A surviving former spouse of a participant or retired participant shall not become entitled under section 2032(b) or 2034 of this title to a survivor annuity or to the restoration of a survivor annuity payable from the fund unless the surviving former spouse elects to receive it instead of any other survivor annuity to which the surviving former spouse may be entitled under this or any other retirement system for Government employees on the basis of a marriage to someone other than the participant.

(3) Surviving spouse of post-retirement marriage

A surviving spouse who married a participant after the participant's retirement shall be entitled to a survivor annuity payable from the fund only upon electing that annuity instead of any other survivor annuity to which the surviving spouse may be entitled under this or any other retirement system for Government employees on the basis of a marriage to someone other than the retired participant.

(i) Supplemental survivor annuities

(1) Spouse of recalled annuitant

A married recalled annuitant who reverts to retired status with entitlement to a supplemental annuity under section 2111(b) of this title shall, unless the annuitant and the annuitant's spouse jointly elect in writing to the contrary at the time of reversion to retired status, have the supplemental annuity reduced by 10 percent to provide a supplemental sur-

vivor annuity for the annuitant's spouse. Such supplemental survivor annuity shall be equal to 55 percent of the supplemental annuity of the annuitant.

(2) Regulations

The Director shall prescribe regulations to provide for the application of paragraph (1) of this subsection and of subsection (b) of section 2111 of this title in any case in which an annuitant has a former spouse who was married to the recalled annuitant at any time during the period of recall service and who qualifies for an annuity under section 2032(b) of this title.

(j) Offset of annuities by amount of social security benefit

Notwithstanding any other provision of this subchapter, an annuity (including a disability annuity) payable under this subchapter to an individual described in sections 2021(d)(1) and 2151(c)(1) of this title and any survivor annuity payable under this subchapter on the basis of the service of such individual shall be reduced in a manner consistent with section 8349 of title 5, under conditions consistent with the conditions prescribed in that section.

(k) Information from other agencies

(1) Other agencies

For the purpose of ensuring the accuracy of the information used in the determination of eligibility for and the computation of annuities payable from the fund under this subchapter, at the request of the Director—

(A) the Secretary of Defense shall provide information on retired or retainer pay paid under title 10;

(B) the Secretary of Veterans Affairs shall provide information on pensions or compensation paid under title 38;

(C) the Secretary of Health and Human Services shall provide information contained in the records of the Social Security Administration; and

(D) the Secretary of Labor shall provide information on benefits paid under subchapter I of chapter 81 of title 5.

(2) Limitation on information requested

The Director shall request only such information as the Director determines is necessary.

(3) Limitation on uses of information

The Director, in consultation with the officials from whom information is requested, shall ensure that information made available under this subsection is used only for the purposes authorized.

(l) Information on rights under system

The Director shall, on an annual basis—

(1) inform each retired participant of the participant's right of election under subsections (c), (f)(2), and (g) of this section; and

(2) to the maximum extent practicable, inform spouses and former spouses of participants, former participants, and retired participants of their rights under this chapter.

(Pub. L. 88-643, title II, §221, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat.

3204; amended Pub. L. 103-178, title II, §202(a)(4), Dec. 3, 1993, 107 Stat. 2026.)

PRIOR PROVISIONS

A prior section 221 of Pub. L. 88-643, title II, Oct. 13, 1964, 78 Stat. 1045; Pub. L. 91-185, §2, Dec. 30, 1969, 83 Stat. 847; Pub. L. 91-626, §§2, 3, Dec. 31, 1970, 84 Stat. 1872; Pub. L. 94-522, title II, §§202-204, Oct. 17, 1976, 90 Stat. 2468, 2469; Ex. Ord. No. 12326, §§1, 3, 6, Sept. 30, 1981, 46 F.R. 48889, 48890; Pub. L. 97-269, title VI, §§603-605, 610, Sept. 27, 1982, 96 Stat. 1146, 1147, 1153; Ex. Ord. No. 12443, §§4, 7, 8, Sept. 27, 1983, 48 F.R. 44752; Pub. L. 99-335, title V, §§501(2), (3), 503, June 6, 1986, 100 Stat. 622, 623; Pub. L. 100-178, title IV, §402(b)(1), Dec. 2, 1987, 101 Stat. 1014; Pub. L. 100-453, title III, §302(d)(1), (2), Sept. 29, 1988, 102 Stat. 1907; Pub. L. 102-88, title III, §§304(a), 305(a)(1), 306, Aug. 14, 1991, 105 Stat. 431, 432; Pub. L. 102-183, title III, §§302(a), 303(a), Dec. 4, 1991, 105 Stat. 1262, 1263, related to computation of annuities for other than former spouses and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88-643 by section 802 of Pub. L. 102-496.

AMENDMENTS

1993—Subsec. (a)(4). Pub. L. 103-178, §202(a)(4)(A), struck out “(or, in the case of an annuity computed under section 2052 of this title and based on less than 3 years, over the total service)” after “years of the participant’s service”.

Subsec. (f)(1)(A). Pub. L. 103-178, §202(a)(4)(B), inserted “after the participant’s death” after “under the system” and struck out “after the participant’s death” after “participant’s reduced annuity”.

Subsec. (g)(1). Pub. L. 103-178, §202(a)(4)(C), substituted “(or is remarried, if” for “(or is remarried if”.

Subsec. (j). Pub. L. 103-178, §202(a)(4)(D), struck out “(except as provided in paragraph (2))” after “individual shall be reduced”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-178 effective Feb. 1, 1993, see section 202(b) of Pub. L. 103-178, set out as a note under section 2001 of this title.

§ 2032. Annuities for former spouses

(a) Former spouse share of participant’s annuity

(1) Pro rata share

Unless otherwise expressly provided by a spousal agreement or court order under section 2094(b) of this title, a former spouse of a participant, former participant, or retired participant is entitled to an annuity—

(A) if married to the participant, former participant, or retired participant throughout the creditable service of the participant, equal to 50 percent of the annuity of the participant; or

(B) if not married to the participant throughout such creditable service, equal to that proportion of 50 percent of such annuity that is the proportion that the number of days of the marriage of the former spouse to the participant during periods of creditable service of such participant under this subchapter bears to the total number of days of such creditable service.

(2) Disqualification upon remarriage before age 55

A former spouse is not qualified for an annuity under this subsection if before the commencement of that annuity the former spouse remarries before becoming 55 years of age.

(3) Commencement of annuity

The annuity of a former spouse under this subsection commences on the day the participant upon whose service the annuity is based becomes entitled to an annuity under this subchapter or on the first day of the month after the divorce or annulment involved becomes final, whichever is later.

(4) Termination of annuity

The annuity of such former spouse and the right thereto terminate on—

(A) the last day of the month before the month in which the former spouse dies or remarries before 55 years of age; or

(B) the date on which the annuity of the participant terminates (except in the case of an annuity subject to paragraph (5)(B)).

(5) Treatment of participant’s annuity

(A) Reduction in participant’s annuity

The annuity payable to any participant shall be reduced by the amount of an annuity under this subsection paid to any former spouse based upon the service of that participant. Such reduction shall be disregarded in calculating—

(i) the survivor annuity for any spouse, former spouse, or other survivor under this subchapter; and

(ii) any reduction in the annuity of the participant to provide survivor benefits under subsection (b) of this section or under section 2031(b) of this title.

(B) Treatment when annuitant returns to service

If an annuitant whose annuity is reduced under subparagraph (A) is recalled to service under section 2111 of this title, or reinstated or reappointed, in the case of a recovered disability annuitant, or if any annuitant is reemployed as provided for under sections 2112 and 2113 of this title, the pay of that annuitant shall be reduced by the same amount as the annuity would have been reduced if it had continued. Amounts equal to the reductions under this subparagraph shall be deposited in the Treasury of the United States to the credit of the fund.

(6) Disability annuitant

Notwithstanding paragraph (3), in the case of a former spouse of a disability annuitant—

(A) the annuity of that former spouse shall commence on the date on which the participant would qualify on the basis of the participant’s creditable service for an annuity under this subchapter (other than a disability annuity) or the date on which the disability annuity begins, whichever is later, and

(B) the amount of the annuity of the former spouse shall be calculated on the basis of the annuity for which the participant would otherwise so qualify.

(7) Election of benefits

A former spouse of a participant, former participant, or retired participant shall not become entitled under this subsection to an annuity payable from the fund unless the former

spouse elects to receive it instead of any survivor annuity to which the former spouse may be entitled under this or any other retirement system for Government employees on the basis of a marriage to someone other than the participant.

(8) Limitation in case of multiple former spouse annuities

No spousal agreement or court order under section 2094(b) of this title involving a participant may provide for an annuity or a combination of annuities under this subsection that exceeds the annuity of the participant.

(b) Former spouse survivor annuity

(1) Pro rata share

Subject to any election under section 2031(b)(1)(B) and (C) of this title and unless otherwise expressly provided by a spousal agreement or court order under section 2094(b) of this title, if an annuitant is survived by a former spouse, the former spouse shall be entitled—

(A) if married to the annuitant throughout the creditable service of the annuitant, to a survivor annuity equal to 55 percent of the unreduced amount of the annuitant's annuity, as computed under section 2031(a) of this title; and

(B) if not married to the annuitant throughout such creditable service, to a survivor annuity equal to that proportion of 55 percent of the unreduced amount of such annuity that is the proportion that the number of days of the marriage of the former spouse to the participant during periods of creditable service of such participant under this subchapter bears to the total number of days of such creditable service.

(2) Disqualification upon remarriage before age 55

A former spouse shall not be qualified for an annuity under this subsection if before the commencement of that annuity the former spouse remarries before becoming 55 years of age.

(3) Commencement, termination, and restoration of annuity

An annuity payable from the fund under this subchapter to a surviving former spouse under this subsection shall commence on the day after the annuitant dies and shall terminate on the last day of the month before the former spouse's death or remarriage before attaining age 55. If such a survivor annuity is terminated because of remarriage, it shall be restored at the same rate commencing on the date such remarriage is dissolved by death, annulment, or divorce if any lump sum paid upon termination of the annuity is returned to the fund.

(4) Survivor annuity amount

(A) Maximum amount

The maximum survivor annuity or combination of survivor annuities under this subsection (and section 2031(b)(3) of this title) with respect to any participant may not exceed 55 percent of the full amount of the par-

ticipant's annuity, as calculated under section 2031(a) of this title.

(B) Limitation on other survivor annuities based on service of same participant

Once a survivor annuity has been provided under this subsection for any former spouse, a survivor annuity for another individual may thereafter be provided under this subsection (or section 2031(b)(3) of this title) with respect to the participant only for that portion (if any) of the maximum available which is not committed for survivor benefits for any former spouse whose prospective right to such annuity has not terminated by reason of death or remarriage.

(C) Finality of court order upon death of participant

After the death of a participant or retired participant, a court order under section 2094(b) of this title may not adjust the amount of the annuity of a former spouse of that participant or retired participant under this section.

(5) Effect of termination of former spouse entitlement

(A) Recomputation of participant's annuity

If a former spouse of a retired participant dies or remarries before attaining age 55, the annuity of the retired participant, if reduced to provide a survivor annuity for that former spouse, shall be recomputed and paid, effective on the first day of the month beginning after such death or remarriage, as if the annuity had not been so reduced, unless an election is in effect under subparagraph (B).

(B) Election of spouse annuity

Subject to paragraph (4)(B), the participant may elect in writing within one year after receipt of notice of the death or remarriage of the former spouse to continue the reduction in order to provide a higher survivor annuity under section 2031(b)(3) of this title for any spouse of the participant.

(c) Optional additional survivor annuities for other former spouse or surviving spouse

(1) In general

In the case of any participant providing a survivor annuity under subsection (b) of this section for a former spouse—

(A) such participant may elect, or

(B) a spousal agreement or court order under section 2094(b) of this title may provide for,

an additional survivor annuity under this subsection for any other former spouse or spouse surviving the participant, if the participant satisfactorily passes a physical examination as prescribed by the Director.

(2) Limitation

Neither the total amount of survivor annuity or annuities under this subsection with respect to any participant, nor the survivor annuity or annuities for any one surviving spouse or former spouse of such participant under this section or section 2031 of this title, may exceed 55 percent of the unreduced

amount of the participant's annuity, as computed under section 2031(a) of this title.

(3) Contribution for additional annuities

(A) Provision of additional survivor annuity

In accordance with regulations which the Director shall prescribe, the participant involved may provide for any annuity under this subsection—

- (i) by a reduction in the annuity or an allotment from the basic pay of the participant;
- (ii) by a lump-sum payment or installment payments to the fund; or
- (iii) by any combination thereof.

(B) Actuarial equivalence to benefit

The present value of the total amount to accrue to the fund under subparagraph (A) to provide any annuity under this subsection shall be actuarially equivalent in value to such annuity, as calculated upon such tables of mortality as may from time to time be prescribed for this purpose by the Director.

(C) Effect of former spouse's death or disqualification

If a former spouse predeceases the participant or remarries before attaining age 55 (or, in the case of a spouse, the spouse predeceases the participant or does not qualify as a former spouse upon dissolution of the marriage)—

- (i) if an annuity reduction or pay allotment under subparagraph (A) is in effect for that spouse or former spouse, the annuity shall be recomputed and paid as if it had not been reduced or the pay allotment terminated, as the case may be; and
- (ii) any amount accruing to the fund under subparagraph (A) shall be refunded, but only to the extent that such amount may have exceeded the actuarial cost of providing benefits under this subsection for the period such benefits were provided, as determined under regulations prescribed by the Director.

(D) Recomputation upon death or remarriage of former spouse

Under regulations prescribed by the Director, an annuity shall be recomputed (or a pay allotment terminated or adjusted), and a refund provided (if appropriate), in a manner comparable to that provided under subparagraph (C), in order to reflect a termination or reduction of future benefits under this subsection for a spouse in the event a former spouse of the participant dies or remarries before attaining age 55 and an increased annuity is provided for that spouse in accordance with this section.

(4) Commencement and termination of additional survivor annuity

An annuity payable under this subsection to a spouse or former spouse shall commence on the day after the participant dies and shall terminate on the last day of the month before the spouse's or the former spouse's death or remarriage before attaining age 55.

(5) Nonapplicability of COLA provision

Section 2131 of this title does not apply to an annuity under this subsection, unless author-

ized under regulations prescribed by the Director.

(Pub. L. 88-643, title II, §222, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3212; amended Pub. L. 103-178, title II, §202(a)(5), Dec. 3, 1993, 107 Stat. 2026.)

PRIOR PROVISIONS

A prior section 222 of Pub. L. 88-643, as added Pub. L. 97-269, title VI, §606, Sept. 27, 1982, 96 Stat. 1148; amended Pub. L. 99-335, title V, §501(2), (3), June 6, 1986, 100 Stat. 622; Pub. L. 102-88, title III, §305(a)(2), Aug. 14, 1991, 105 Stat. 432, related to computation of annuities for former spouses and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88-643 by section 802 of Pub. L. 102-496.

AMENDMENTS

1993—Subsec. (a)(7). Pub. L. 103-178, §202(a)(5)(A), substituted "any survivor annuity" for "any other annuity".

Subsec. (c)(3)(C). Pub. L. 103-178, §202(a)(5)(B), inserted "the participant" before "or does not qualify".
Subsec. (c)(4). Pub. L. 103-178, §202(a)(5)(C), substituted "before the spouse's or the former spouse's death" for "before the former spouse's death".

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-178 effective Feb. 1, 1993, see section 202(b) of Pub. L. 103-178, set out as a note under section 2001 of this title.

SURVIVOR ANNUITY, RETIREMENT ANNUITY, AND HEALTH BENEFITS FOR CERTAIN EX-SPOUSES OF CENTRAL INTELLIGENCE AGENCY EMPLOYEES; EFFECTIVE DATE

Section 203 of Pub. L. 103-178 provided that:

“(a) SURVIVOR ANNUITY.—

“(1) IN GENERAL.—

“(A) ENTITLEMENT OF FORMER WIFE OR HUSBAND.—

Any person who was divorced on or before December 4, 1991, from a participant or retired participant in the Central Intelligence Agency Retirement and Disability System and who was married to such participant for not less than 10 years during such participant's creditable service, at least five years of which were spent by the participant during the participant's service as an employee of the Central Intelligence Agency outside the United States, or otherwise in a position the duties of which qualified the participant for designation by the Director of Central Intelligence as a participant under section 203 of the Central Intelligence Agency Retirement Act (50 U.S.C. 2013), shall be entitled, except to the extent such person is disqualified under paragraph (2), to a survivor annuity equal to 55 percent of the greater of—

“(i) the unreduced amount of the participant's annuity, as computed under section 221(a) of such Act [50 U.S.C. 2031(a)]; or

“(ii) the unreduced amount of what such annuity as so computed would be if the participant had not elected payment of the lump-sum credit under section 294 of such Act [50 U.S.C. 2143].

“(B) REDUCTION IN SURVIVOR ANNUITY.—A survivor annuity payable under this subsection shall be reduced by an amount equal to any survivor annuity payments made to the former wife or husband under section 226 of such Act [50 U.S.C. 2036].

“(2) LIMITATIONS.—A former wife or husband is not entitled to a survivor annuity under this subsection if—

“(A) the former wife or husband remarries before age 55, except that the entitlement of the former wife or husband to such a survivor annuity shall be restored on the date such remarriage is dissolved by death, annulment, or divorce;

“(B) the former wife or husband is less than 50 years of age; or

“(C) the former wife or husband meets the definition of ‘former spouse’ that was in effect under section 204(b)(4) of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees before December 4, 1991 [section 204(b)(4) of Pub. L. 88-643 prior to enactment of Pub. L. 102-496, formerly set out as a note under section 403 of this title].

“(3) COMMENCEMENT AND TERMINATION OF ANNUITY.—

“(A) COMMENCEMENT OF ANNUITY.—The entitlement of a former wife or husband to a survivor annuity under this subsection shall commence—

“(i) in the case of a former wife or husband of a participant or retired participant who is deceased as of October 1, 1994, beginning on the later of—

“(I) the 60th day after such date; or

“(II) the date on which the former wife or husband reaches age 50; and

“(ii) in the case of any other former wife or husband, beginning on the latest of—

“(I) the date on which the participant or retired participant to whom the former wife or husband was married dies;

“(II) the 60th day after October 1, 1994; or

“(III) the date on which the former wife or husband attains age 50.

“(B) TERMINATION OF ANNUITY.—The entitlement of a former wife or husband to a survivor annuity under this subsection terminates on the last day of the month before the former wife’s or husband’s death or remarriage before attaining age 55. The entitlement of a former wife or husband to such a survivor annuity shall be restored on the date such remarriage is dissolved by death, annulment, or divorce.

“(4) ELECTION OF BENEFITS.—A former wife or husband of a participant or retired participant shall not become entitled under this subsection to a survivor annuity or to the restoration of the survivor annuity unless the former wife or husband elects to receive it instead of any other survivor annuity to which the former wife or husband may be entitled under the Central Intelligence Agency Retirement and Disability System or any other retirement system for Government employees on the basis of a marriage to someone other than the participant.

“(5) APPLICATION—

“(A) TIME LIMIT; WAIVER.—A survivor annuity under this subsection shall not be payable unless appropriate written application is provided to the Director, complete with any supporting documentation which the Director may by regulation require. Any such application shall be submitted not later than October 1, 1995. The Director may waive the application deadline under the preceding sentence in any case in which the Director determines that the circumstances warrant such a waiver.

“(B) RETROACTIVE BENEFITS.—Upon approval of an application provided under subparagraph (A), the appropriate survivor annuity shall be payable to the former wife or husband with respect to all periods before such approval during which the former wife or husband was entitled to such annuity under this subsection, but in no event shall a survivor annuity be payable under this subsection with respect to any period before October 1, 1994.

“(6) RESTORATION OF ANNUITY.—Notwithstanding paragraph (5)(A), the deadline by which an application for a survivor annuity must be submitted shall not apply in cases in which a former spouse’s entitlement to such a survivor annuity is restored after October 1, 1994, under paragraph (2)(A) or (3)(B).

“(7) APPLICABILITY IN CASES OF PARTICIPANTS TRANSFERRED TO FERS.—

“(A) ENTITLEMENT.—Except as provided in paragraph (2), this subsection shall apply to a former wife or husband of a participant under the Central Intelligence Agency Retirement and Disability System who has elected to become subject to chapter 84 of title 5, United States Code.

“(B) AMOUNT OF ANNUITY.—The survivor annuity of a person covered by subparagraph (A) shall be equal to 50 percent of the unreduced amount of the participant’s annuity computed in accordance with section 302(a) of the Federal Employees’ Retirement System Act of 1986 [Pub. L. 99-335, 5 U.S.C. 8331 note] and shall be reduced by an amount equal to any survivor annuity payments made to the former wife or husband under section 8445 of title 5, United States Code.

“(b) RETIREMENT ANNUITY.—

“(1) IN GENERAL.—

“(A) ENTITLEMENT OF FORMER WIFE OR HUSBAND.—A person described in subsection (a)(1)(A) shall be entitled, except to the extent such former spouse is disqualified under paragraph (2), to an annuity—

“(i) if married to the participant throughout the creditable service of the participant, equal to 50 percent of the annuity of the participant; or

“(ii) if not married to the participant throughout such creditable service, equal to that former wife’s or husband’s pro rata share of 50 percent of such annuity (determined in accordance with section 222(a)(1)(B) of the Central Intelligence Agency Retirement Act (50 U.S.C. 2032 (a)(1)(B))).

“(B) REDUCTION IN RETIREMENT ANNUITIES.—

“(i) AMOUNT OF REDUCTION.—An annuity payable under this subsection shall be reduced by an amount equal to any apportionment payments payable to the former wife or husband pursuant to the terms of a court order incident to the dissolution of the marriage of such former spouse and the participant, former participant, or retired participant.

“(ii) DEFINITION OF TERMS.—For purposes of clause (i):

“(I) APPORTIONMENT.—The term ‘apportionment’ means a portion of a retired participant’s annuity payable to a former wife or husband either by the retired participant or the Government in accordance with the terms of a court order.

“(II) COURT ORDER.—The term ‘court order’ means any decree of divorce or annulment or any court order or court-approved property settlement agreement incident to such decree.

“(2) LIMITATIONS.—A former wife or husband is not entitled to an annuity under this subsection if—

“(A) the former wife or husband remarries before age 55, except that the entitlement of the former wife or husband to an annuity under this subsection shall be restored on the date such remarriage is dissolved by death, annulment, or divorce;

“(B) the former wife or husband is less than 50 years of age; or

“(C) the former wife or husband meets the definition of ‘former spouse’ that was in effect under section 204(b)(4) of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees before December 4, 1991 [section 204(b)(4) of Pub. L. 88-643 prior to enactment of Pub. L. 102-496, formerly set out as a note under section 403 of this title].

“(3) COMMENCEMENT AND TERMINATION.—

“(A) RETIREMENT ANNUITIES.—The entitlement of a former wife or husband to an annuity under this subsection—

“(i) shall commence on the later of—

“(I) October 1, 1994;

“(II) the day the participant upon whose service the right to the annuity is based becomes entitled to an annuity under such Act [probably means Central Intelligence Agency Retirement Act, 50 U.S.C. 2001 et seq.]; or

“(III) such former wife’s or husband’s 50th birthday; and

“(ii) shall terminate on the earlier of—

“(I) the last day of the month before the former wife or husband dies or remarries before 55 years of age, except that the entitlement of the former wife or husband to an annuity under

this subsection shall be restored on the date such remarriage is dissolved by death, annulment, or divorce; or

“(II) the date on which the annuity of the participant terminates.

“(B) DISABILITY ANNUITIES.—Notwithstanding subparagraph (A)(i)(II), in the case of a former wife or husband of a disability annuitant—

“(i) the annuity of the former wife or husband shall commence on the date on which the participant would qualify on the basis of the participant’s creditable service for an annuity under the Central Intelligence Agency Retirement Act [50 U.S.C. 2001 et seq.] (other than a disability annuity) or the date the disability annuity begins, whichever is later; and

“(ii) the amount of the annuity of the former wife or husband shall be calculated on the basis of the annuity for which the participant would otherwise so qualify.

“(C) ELECTION OF BENEFITS.—A former wife or husband of a participant or retired participant shall not become entitled under this subsection to an annuity or to the restoration of an annuity unless the former wife or husband elects to receive it instead of any survivor annuity to which the former wife or husband may be entitled under the Central Intelligence Agency Retirement and Disability System or any other retirement system for Government employees on the basis of a marriage to someone other than the participant.

“(D) APPLICATION.—

“(i) TIME LIMIT; WAIVER.—An annuity under this subsection shall not be payable unless appropriate written application is provided to the Director of Central Intelligence, complete with any supporting documentation which the Director may by regulation require, not later than October 1, 1995. The Director may waive the application deadline under the preceding sentence in any case in which the Director determines that the circumstances warrant such a waiver.

“(ii) RETROACTIVE BENEFITS.—Upon approval of an application under clause (i), the appropriate annuity shall be payable to the former wife or husband with respect to all periods before such approval during which the former wife or husband was entitled to an annuity under this subsection, but in no event shall an annuity be payable under this subsection with respect to any period before October 1, 1994.

“(4) RESTORATION OF ANNUITIES.—Notwithstanding paragraph (3)(D)(i), the deadline by which an application for a retirement annuity must be submitted shall not apply in cases in which a former spouse’s entitlement to such annuity is restored after October 1, 1994, under paragraph (2)(A) or (3)(A)(ii).

“(5) APPLICABILITY IN CASES OF PARTICIPANTS TRANSFERRED TO FERS.—The provisions of this subsection shall apply to a former wife or husband of a participant under the Central Intelligence Agency Retirement and Disability System who has elected to become subject to chapter 84 of title 5, United States Code. For purposes of this paragraph, any reference in this section to a participant’s annuity under the Central Intelligence Agency Retirement and Disability System shall be deemed to refer to the transferred participant’s annuity computed in accordance with section 302(a) of the Federal Employee’s Retirement System Act of 1986 [Pub. L. 99-335, 5 U.S.C. 8331 note].

“(6) SAVINGS PROVISION.—Nothing in this subsection shall be construed to impair, reduce, or otherwise affect the annuity or the entitlement to an annuity of a participant or former participant under title II or III of the Central Intelligence Agency Retirement Act [50 U.S.C. 2011 et seq., 2151 et seq.].

“(c) HEALTH BENEFITS.—[Amended section 403p of this title.]

“(d) SOURCE OF PAYMENT FOR ANNUITIES.—Annuities provided under subsections (a) and (b) shall be payable

from the Central Intelligence Agency Retirement and Disability Fund maintained under section 202 of the Central Intelligence Agency Retirement Act (50 U.S.C. 2012).

“(e) EFFECTIVE DATE.—

“(1) IN GENERAL.—Except as provided in paragraph (2), subsections (a) and (b) shall take effect as of October 1, 1994, the amendments made by subsection (c) [amending section 403p of this title] shall apply to individuals on and after October 1, 1994, and no benefits provided pursuant to those subsections shall be payable with respect to any period before October 1, 1994.

“(2) Section 16(d) of the Central Intelligence Agency Act of 1949 (as added by subsection (c) of this section) [50 U.S.C. 403p(d)] shall apply to individuals beginning on the date of enactment of this Act [Dec. 3, 1993].”

[Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director’s capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director’s capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108-458, set out as a note under section 401 of this title.]

§ 2033. Election of survivor benefits for certain former spouses divorced as of November 15, 1982

(a) Former spouses as of November 15, 1982

A participant, former participant, or retired participant in the system who on November 15, 1982, had a former spouse may, by a spousal agreement, elect to receive a reduced annuity and provide a survivor annuity for such former spouse under section 2032(b) of this title.

(b) Time for making election

(1) If the participant or former participant has not retired under such system on or before November 15, 1982, an election under this section may be made at any time before retirement.

(2) If the participant or former participant has retired under such system on or before November 15, 1982, an election under this section may be made within such period after November 15, 1982, as the Director may prescribe.

(3) For the purposes of applying this subchapter, any such election shall be treated in the same manner as if it were a spousal agreement under section 2094(b) of this title.

(c) Base for annuity

An election under this section may provide for a survivor annuity based on all or any portion of that part of the annuity of the participant which is not designated or committed as a base for a survivor annuity for a spouse or any other former spouse of the participant. The participant and the participant’s spouse may make an election under section 2031(b)(1)(B) of this title before the time of retirement for the purpose of allowing an election to be made under this section.

(d) Reduction in participant’s annuity

(1) Computation

The amount of the reduction in the participant’s annuity shall be determined in accordance with section 2031(b)(2) of this title.

(2) Effective date of reduction

Such reduction shall be effective as of—

(A) the commencing date of the participant's annuity, in the case of an election under subsection (b)(1) of this section; or

(B) November 15, 1982, in the case of an election under subsection (b)(2) of this section.

(Pub. L. 88-643, title II, §223, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3216.)

PRIOR PROVISIONS

A prior section 223 of Pub. L. 88-643, as added Pub. L. 97-269, title VI, §607, Sept. 27, 1982, 96 Stat. 1151; amended Pub. L. 99-335, title V, §501(2), June 6, 1986, 100 Stat. 622, related to election of survivor benefits for certain former spouses and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88-643 by section 802 of Pub. L. 102-496.

§ 2034. Survivor annuity for certain other former spouses

(a) Survivor annuity

(1) In general

An individual who was a former spouse of a participant or retired participant on November 15, 1982, shall be entitled, except to the extent such former spouse is disqualified under subsection (b) of this section, to a survivor annuity equal to 55 percent of the greater of—

(A) the unreduced amount of the participant's or retired participant's annuity, as computed under section 2031(a) of this title; or

(B) the unreduced amount of what such annuity as so computed would be if the participant, former participant, or retired participant had not elected payment of the lump-sum credit under section 2143 of this title.

(2) Reduction in survivor annuity

A survivor annuity payable under this section shall be reduced by an amount equal to any survivor annuity payments made to the former spouse under section 2033 of this title.

(b) Limitations

A former spouse is not entitled to a survivor annuity under this section if—

(1) the former spouse remarries before age 55, except that the entitlement of the former spouse to such a survivor annuity shall be restored on the date such remarriage is dissolved by death, annulment, or divorce; or

(2) the former spouse is less than 50 years of age.

(c) Commencement and termination of annuity

(1) Commencement of annuity

The entitlement of a former spouse to a survivor annuity under this section shall commence—

(A) in the case of a former spouse of a participant or retired participant who is deceased as of October 1, 1986, beginning on the later of—

(i) the 60th day after such date; or

(ii) the date on which the former spouse reaches age 50; and

(B) in the case of any other former spouse, beginning on the latest of—

(i) the date on which the participant or retired participant to whom the former spouse was married dies;

(ii) the 60th day after October 1, 1986; or

(iii) the date on which the former spouse attains age 50.

(2) Termination of annuity

The entitlement of a former spouse to a survivor annuity under this section terminates on the last day of the month before the former spouse's death or remarriage before attaining age 55. The entitlement of a former spouse to such a survivor annuity shall be restored on the date such remarriage is dissolved by death, annulment, or divorce.

(d) Application

(1) Time limit; waiver

A survivor annuity under this section shall not be payable unless appropriate written application is provided to the Director, complete with any supporting documentation which the Director may by regulation require. Any such application shall be submitted not later than April 1, 1989. The Director may waive the application deadline under the preceding sentence in any case in which the Director determines that the circumstances warrant such a waiver.

(2) Retroactive benefits

Upon approval of an application provided under paragraph (1), the appropriate survivor annuity shall be payable to the former spouse with respect to all periods before such approval during which the former spouse was entitled to such annuity under this section, but in no event shall a survivor annuity be payable under this section with respect to any period before October 1, 1986.

(e) Restoration of annuity

Notwithstanding subsection (d)(1) of this section, the deadline by which an application for a survivor annuity must be submitted shall not apply in cases in which a former spouse's entitlement to such a survivor annuity is restored under subsection (b)(1) or (c)(2) of this section.

(Pub. L. 88-643, title II, §224, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3217; amended Pub. L. 103-178, title II, §202(a)(6), Dec. 3, 1993, 107 Stat. 2026.)

PRIOR PROVISIONS

A prior section 224 of Pub. L. 88-643, as added Pub. L. 99-569, title III, §302(a), Oct. 27, 1986, 100 Stat. 3192; amended Pub. L. 100-453, title III, §302(b)(1), Sept. 29, 1988, 102 Stat. 1907; Pub. L. 101-193, title III, §304(a), Nov. 30, 1989, 103 Stat. 1703; Pub. L. 102-88, title III, §307(a), Aug. 14, 1991, 105 Stat. 432; Pub. L. 102-183, title III, §304, Dec. 4, 1991, 105 Stat. 1264, related to survivor annuities for certain other former spouses and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88-643 by section 802 of Pub. L. 102-496.

AMENDMENTS

1993—Subsec. (c)(1)(B)(i). Pub. L. 103-178 substituted “retired participant” for “former participant”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-178 effective Feb. 1, 1993, see section 202(b) of Pub. L. 103-178, set out as a note under section 2001 of this title.

§ 2035. Retirement annuity for certain former spouses

(a) Retirement annuity

An individual who was a former spouse of a participant, former participant, or retired participant on November 15, 1982, and any former spouse divorced after November 15, 1982, from a participant or former participant who retired before November 15, 1982, shall be entitled, except to the extent such former spouse is disqualified under subsection (b) of this section, to an annuity—

(1) if married to the participant throughout the creditable service of the participant, equal to 50 percent of the annuity of the participant; or

(2) if not married to the participant throughout such creditable service, equal to that former spouse's pro rata share of 50 percent of such annuity.

(b) Limitations

A former spouse is not entitled to an annuity under this section if—

(1) the former spouse remarries before age 55, except that the entitlement of the former spouse to an annuity under this section shall be restored on the date such remarriage is dissolved by death, annulment, or divorce; or

(2) the former spouse is less than 50 years of age.

(c) Commencement and termination

(1) Retirement annuities

The entitlement of a former spouse to an annuity under this section—

(A) shall commence on the later of—

(i) the day the participant upon whose service the right to the annuity is based becomes entitled to an annuity under this subchapter;

(ii) the first day of the month in which the divorce or annulment involved becomes final; or

(iii) such former spouse's 50th birthday; and

(B) shall terminate on the earlier of—

(i) the last day of the month before the former spouse dies or remarries before 55 years of age, except that the entitlement of the former spouse to an annuity under this section shall be restored on the date such remarriage is dissolved by death, annulment, or divorce; or

(ii) the date on which the annuity of the participant terminates.

(2) Disability annuities

Notwithstanding paragraph (1)(A)(i), in the case of a former spouse of a disability annuitant—

(A) the annuity of the former spouse shall commence on the date on which the participant would qualify on the basis of the participant's creditable service for an annuity under this subchapter (other than disability annuity) or the date the disability annuity begins, whichever is later; and

(B) the amount of the annuity of the former spouse shall be calculated on the

basis of the annuity for which the participant would otherwise so qualify.

(3) Election of benefits

A former spouse of a participant or retired participant shall not become entitled under this section to an annuity or to the restoration of an annuity payable from the fund unless the former spouse elects to receive it instead of any survivor annuity to which the former spouse may be entitled under this or any other retirement system for Government employees on the basis of a marriage to someone other than the participant.

(4) Application

(A) Time limit; waiver

An annuity under this section shall not be payable unless appropriate written application is provided to the Director, complete with any supporting documentation which the Director may by regulation require, not later than June 2, 1990. The Director may waive the application deadline under the preceding sentence in any case in which the Director determines that the circumstances warrant such a waiver.

(B) Retroactive benefits

Upon approval of an application under subparagraph (A), the appropriate annuity shall be payable to the former spouse with respect to all periods before such approval during which the former spouse was entitled to an annuity under this section, but in no event shall an annuity be payable under this section with respect to any period before December 2, 1987.

(d) Restoration of annuities

Notwithstanding subsection (c)(4)(A) of this section, the deadline by which an application for a retirement annuity must be submitted shall not apply in cases in which a former spouse's entitlement to such annuity is restored under subsection (b)(1) or (c)(1)(B) of this section.

(e) Savings provision

Nothing in this section shall be construed to impair, reduce, or otherwise affect the annuity or the entitlement to an annuity of a participant or former participant under this subchapter.

(Pub. L. 88-643, title II, §225, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3218; amended Pub. L. 103-178, title II, §202(a)(7), Dec. 3, 1993, 107 Stat. 2026.)

PRIOR PROVISIONS

A prior section 225 of Pub. L. 88-643, as added Pub. L. 100-178, title IV, §401(a), Dec. 2, 1987, 101 Stat. 1012; amended Pub. L. 100-453, title III, §302(c)(1), Sept. 29, 1988, 102 Stat. 1907; Pub. L. 102-88, title III, §307(b), Aug. 14, 1991, 105 Stat. 433, related to retirement benefits for certain other former spouses and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88-643 by section 802 of Pub. L. 102-496.

AMENDMENTS

1993—Subsec. (c)(3). Pub. L. 103-178, §202(a)(7)(A), substituted "any survivor annuity" for "any other annuity".

Subsec. (c)(4)(A). Pub. L. 103-178, §202(a)(7)(B), substituted “June 2, 1990” for “June 2, 1991”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-178 effective Feb. 1, 1993, see section 202(b) of Pub. L. 103-178, set out as a note under section 2001 of this title.

§ 2036. Survivor annuities for previous spouses

The Director shall prescribe regulations under which a previous spouse who is divorced after September 29, 1988, from a participant, former participant, or retired participant shall be eligible for a survivor annuity to the same extent and, to the greatest extent practicable, under the same conditions (including reductions to be made in the annuity of the participant) applicable to former spouses (as defined in section 8331(23) of title 5) of participants in the Civil Service Retirement and Disability System (CSRS) as prescribed by the Civil Service Retirement Spouse Equity Act of 1984.

(Pub. L. 88-643, title II, §226, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3220.)

REFERENCES IN TEXT

The Civil Service Retirement Spouse Equity Act of 1984, referred to in text, is Pub. L. 98-615, Nov. 8, 1984, 98 Stat. 3195, as amended. For complete classification of this Act to the Code, see Short Title of 1984 Amendment note set out under section 8331 of Title 5, Government Organization and Employees, and Tables.

PRIOR PROVISIONS

A prior section 226 of Pub. L. 88-643, as added Pub. L. 100-453, title III, §302(a), Sept. 29, 1988, 102 Stat. 1906; amended Pub. L. 102-88, title III, §304(b), (c), Aug. 14, 1991, 105 Stat. 431, 432; Pub. L. 102-183, title III, §306(a), (b), Dec. 4, 1991, 105 Stat. 1265, related to survivor annuities for previous spouses and second chance to elect survivor annuity for certain spouses and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88-643 by section 802 of Pub. L. 102-496.

PART D—BENEFITS ACCRUING TO CERTAIN PARTICIPANTS

§ 2051. Retirement for disability or incapacity; medical examination; recovery

(a) Disability retirement

(1) Eligibility

A participant who has become disabled shall, upon the participant's own application or upon order of the Director, be retired on an annuity computed under subsection (b) of this section.

(2) Standard for disability determination

A participant shall be considered to be disabled only if the participant—

(A) is found by the Director to be unable, because of disease or injury, to render useful and efficient service in the participant's position; and

(B) is not qualified for reassignment, under procedures prescribed by the Director, to a vacant position in the Agency at the same grade or level and in which the participant would be able to render useful and efficient service.

(3) Time limit for application

(A) One year requirement

A claim may be allowed under this section only if the application is submitted before the participant is separated from the Agency or within one year thereafter.

(B) Waiver for mentally incompetent participant

The time limitation may be waived by the Director for a participant who, at the date of separation from the Agency or within one year thereafter, is mentally incompetent, if the application is filed with the Agency within one year from the date of restoration of the participant to competency or the appointment of a fiduciary, whichever is earlier.

(b) Computation of disability annuity

(1) In general

Except as provided in paragraph (2), an annuity payable under subsection (a) of this section shall be computed under section 2031(a) of this title. However, if the disabled or incapacitated participant has less than 20 years of service credit toward retirement under the system at the time of retirement, the annuity shall be computed on the assumption that the participant has had 20 years of service, but the additional service credit that may accrue to a participant under this paragraph may not exceed the difference between the participant's age at the time of retirement and age 60.

(2) Coordination with military retired pay and veterans' compensation and pension

If a participant retiring under this section is receiving retired pay or retainer pay for military service (except that specified in section 2082(e)(3) of this title) or Department of Veterans Affairs compensation or pension in lieu of such retired or retainer pay, the annuity of that participant shall be computed under section 2031(a) of this title, excluding credit for such military service from that computation. If the amount of the annuity so computed, plus the retired or retainer pay which is received, or which would be received but for the application of the limitation in section 5532¹ of title 5, or the Department of Veterans Affairs compensation or pension in lieu of such retired or retainer pay, is less than the annuity that would be payable under this section in the absence of the previous sentence, an amount equal to the difference shall be added to the annuity payable under section 2031(a) of this title.

(c) Medical examinations

(1) Medical examination required for determination of disability

In each case, the participant shall be given a medical examination by one or more duly qualified physicians or surgeons designated by the Director to conduct examinations, and disability shall be determined by the Director on the basis of the advice of such physicians or surgeons.

¹ See References in Text note below.

(2) Annual reexaminations until age 60

Unless the disability is permanent, like examinations shall be made annually until the annuitant becomes age 60. If the Director determines on the basis of the advice of one or more duly qualified physicians or surgeons conducting such examinations that an annuitant has recovered to the extent that the annuitant can return to duty, the annuitant may apply for reinstatement or reappointment in the Agency within one year from the date the annuitant's recovery is determined.

(3) Reinstatement

Upon application, the Director may reinstate any such recovered disability annuitant in the grade held at time of retirement, or the Director may, taking into consideration the age, qualifications, and experience of such annuitant, and the present grade of the annuitant's contemporaries in the Agency, appoint the annuitant to a grade higher than the one held before retirement.

(4) Termination of disability annuity

Payment of the annuity shall continue until a date one year after the date of examination showing recovery or until the date of reinstatement or reappointment in the Agency, whichever is earlier.

(5) Payment of fees

Fees for examinations under this subsection, together with reasonable traveling and other expenses incurred in order to submit to examination, may be paid out of the fund.

(6) Suspension of annuity pending required examination

If the annuitant fails to submit to examination as required under this section, payment of the annuity shall be suspended until continuance of the disability is satisfactorily established.

(7) Termination of annuity upon restoration of earning capacity

If the annuitant receiving a disability retirement annuity is restored to earning capacity before becoming age 60, payment of the annuity terminates on reemployment by the Government or 180 days after the end of the calendar year in which earning capacity is restored, whichever is earlier. Earning capacity shall be considered to be restored if in any calendar year the income of the annuitant from wages or self-employment, or both, equals at least 80 percent of the current rate of pay for the grade and step the annuitant held at the time of retirement.

(d) Treatment of recovered disability annuitant who is not reinstated**(1) Separation**

If a recovered or restored disability annuitant whose annuity is discontinued is for any reason not reinstated or reappointed in the Agency, the annuitant shall be considered, except for service credit, to have been separated within the meaning of section 2054 of this title as of the date of termination of the disability annuity.

(2) Retirement

After such termination, the recovered or restored annuitant shall be entitled to the benefits of section 2054 or 2071(a) of this title, except that the annuitant may elect voluntary retirement under section 2053 of this title, if qualified thereunder, or may be placed by the Director in an involuntary retirement status under section 2055(a) of this title, if qualified thereunder. Retirement rights under this paragraph shall be based on the provisions of this subchapter in effect as of the date on which the disability annuity is discontinued.

(3) Further disability before age 62

If, based on a current medical examination, the Director determines that a recovered annuitant has, before reaching age 62, again become totally disabled due to recurrence of the disability for which the annuitant was originally retired, the annuitant's terminated disability annuity (same type and rate) shall be reinstated from the date of such medical examination. If a restored-to-earning-capacity annuitant has not medically recovered from the disability for which retired and establishes to the Director's satisfaction that the annuitant's income from wages and self-employment in any calendar year before reaching age 62 was less than 80 percent of the rate of pay for the grade and step the annuitant held at the time of retirement, the annuitant's terminated disability annuity (same type and rate) shall be reinstated from the first of the next following year. If the annuitant has been allowed an involuntary or voluntary retirement annuity in the meantime, the annuitant's reinstated disability annuity shall be substituted for it unless the annuitant elects to retain the former benefit.

(e) Coordination of benefits**(1) Workers' compensation**

A participant is not entitled to receive for the same period of time—

(A) an annuity under this subchapter, and

(B) compensation for injury to, or disability of, such participant under subchapter I of chapter 81 of title 5, other than compensation payable under section 8107 of such title.

(2) Survivor annuities

An individual is not entitled to receive an annuity under this subchapter and a concurrent benefit under subchapter I of chapter 81 of title 5 on account of the death of the same person.

(3) Greater benefit

Paragraphs (1) and (2) do not bar the right of a claimant to the greater benefit conferred by either this subchapter or subchapter I of chapter 81 of title 5.

(f) Offset from survivor annuity for workers' compensation payment**(1) Refund to Department of Labor**

If an individual is entitled to an annuity under this subchapter and the individual receives a lump-sum payment for compensation under section 8135 of title 5 based on the disability or death of the same person, so much

of the compensation as has been paid for a period extended beyond the date payment of the annuity commences, as determined by the Secretary of Labor, shall be refunded to the Department for credit to the Employees' Compensation Fund. Before the individual may receive the annuity, the individual shall—

(A) refund to the Secretary of Labor the amount representing the commuted compensation payments for the extended period; or

(B) authorize the deduction of the amount from the annuity.

(2) Source of deduction

Deductions from the annuity may be made from accrued or accruing payments. The amounts deducted and withheld from the annuity shall be transmitted to the Secretary for reimbursement to the Employees' Compensation Fund.

(3) Prorating deduction

If the Secretary finds that the financial circumstances of an individual entitled to an annuity under this subchapter warrant deferred refunding, deductions from the annuity may be prorated against and paid from accruing payments in such manner as the Secretary determines appropriate.

(Pub. L. 88-643, title II, §231, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3220; amended Pub. L. 103-178, title II, §202(a)(8), Dec. 3, 1993, 107 Stat. 2026.)

REFERENCES IN TEXT

Section 5532 of title 5, referred to in subsec. (b)(2), was repealed by Pub. L. 106-65, div. A, title VI, §651(a)(1), Oct. 5, 1999, 113 Stat. 664.

PRIOR PROVISIONS

A prior section 231 of Pub. L. 88-643, title II, Oct. 13, 1964, 78 Stat. 1046; Ex. Ord. No. 12326, §2, Sept. 30, 1981, 46 F.R. 48889; Pub. L. 94-522, title II, §§205-207, Oct. 17, 1976, 90 Stat. 2470; Ex. Ord. No. 12443, §1, Sept. 27, 1983, 48 F.R. 44751; Pub. L. 99-335, title V, §501(2), June 6, 1986, 100 Stat. 622; Pub. L. 102-183, title III, §305, Dec. 4, 1991, 105 Stat. 1265, related to retirement for disability or incapacity, medical examination, and recovery and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88-643 by section 802 of Pub. L. 102-496.

AMENDMENTS

1993—Subsec. (d)(2). Pub. L. 103-178 substituted “2071(a) of this title” for “2071(b) of this title”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-178 effective Feb. 1, 1993, see section 202(b) of Pub. L. 103-178, set out as a note under section 2001 of this title.

§ 2052. Death in service

(a) Return of contributions when no annuity payable

If a participant dies and no claim for an annuity is payable under this subchapter, the participant's lump-sum credit and any voluntary contributions made under section 2121 of this title, with interest, shall be paid in the order of precedence shown in section 2071(c) of this title.

(b) Survivor annuity for surviving spouse or former spouse

(1) In general

If a participant dies before separation or retirement from the Agency and is survived by a spouse or by a former spouse qualifying for a survivor annuity under section 2032(b) of this title, such surviving spouse shall be entitled to an annuity equal to 55 percent of the annuity computed in accordance with paragraphs (2) and (3) of this subsection and section 2031(a) of this title, and any such surviving former spouse shall be entitled to an annuity computed in accordance with section 2032(b) of this title and paragraph (2) of this subsection as if the participant died after being entitled to an annuity under this subchapter. The annuity of such surviving spouse or former spouse shall commence on the day after the participant dies and shall terminate on the last day of the month before the death or remarriage before attaining age 55 of the surviving spouse or former spouse (subject to the payment and restoration provisions of sections 2031(b)(3)(C), 2031(h), and 2032(b)(3) of this title).

(2) Computation

The annuity payable under paragraph (1) shall be computed in accordance with section 2031(a) of this title, except that the computation of the annuity of the participant under such section shall be at least the smaller of (A) 40 percent of the participant's high-3 average pay, or (B) the sum obtained under such section after increasing the participant's length of service by the difference between the participant's age at the time of death and age 60.

(3) Limitation

Notwithstanding paragraph (1), if the participant had a former spouse qualifying for an annuity under section 2032(b) of this title, the annuity of a surviving spouse under this section shall be subject to the limitation of section 2031(b)(3)(B) of this title, and the annuity of a former spouse under this section shall be subject to the limitation of section 2032(b)(4)(B) of this title.

(4) Precedence of section 2034 survivor annuity over death-in-service annuity

If a former spouse who is eligible for a death-in-service annuity under this section is or becomes eligible for an annuity under section 2034 of this title, the annuity provided under this section shall not be payable and shall be superseded by the annuity under section 2034 of this title.

(c) Annuities for surviving children

(1) Participants dying before April 1, 1992

In the case of a participant who before April 1, 1992, died before separation or retirement from the Agency and who was survived by a child or children—

(A) if the participant was survived by a spouse, there shall be paid from the fund to or on behalf of each such surviving child an annuity determined under section 2031(d)(3)(A) of this title; and

(B) if the participant was not survived by a spouse, there shall be paid from the fund to or on behalf of each such surviving child an annuity determined under section 2031(d)(3)(B) of this title.

(2) Participants dying on or after April 1, 1992

In the case of a participant who on or after April 1, 1992, dies before separation or retirement from the Agency and who is survived by a child or children—

(A) if the participant is survived by a spouse or former spouse who is the natural or adoptive parent of a surviving child of the participant, there shall be paid from the fund to or on behalf of each such surviving child an annuity determined under section 2031(d)(3)(A) of this title; and

(B) if the participant is not survived by a spouse or former spouse who is the natural or adoptive parent of a surviving child of the participant, there shall be paid to or on behalf of each such surviving child an annuity determined under section 2031(d)(3)(B) of this title.

(3) “Former spouse” defined

For purposes of this subsection, the term “former spouse” includes any former wife or husband of a participant, regardless of the length of marriage or the amount of creditable service completed by the participant.

(Pub. L. 88-643, title II, §232, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3223; amended Pub. L. 103-178, title II, §202(a)(9), Dec. 3, 1993, 107 Stat. 2026.)

PRIOR PROVISIONS

A prior section 232 of Pub. L. 88-643, title II, Oct. 13, 1964, 78 Stat. 1048; Pub. L. 91-185, §4, Dec. 30, 1969, 83 Stat. 848; Pub. L. 94-522, title II, §208, Oct. 17, 1976, 90 Stat. 2471; Pub. L. 99-335, title V, §501(2), June 6, 1986, 100 Stat. 622; Pub. L. 100-178, title IV, §402(a), Dec. 2, 1987, 101 Stat. 1013; Pub. L. 101-193, title III, §303, Nov. 30, 1989, 103 Stat. 1703; Pub. L. 102-88, title III, §305(a)(3), Aug. 14, 1991, 105 Stat. 432; Pub. L. 102-183, title III, §302(b), (c), Dec. 4, 1991, 105 Stat. 1262, 1263; Pub. L. 102-496, title III, §304(b), Oct. 24, 1992, 106 Stat. 3183, related to death in service and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88-643 by section 802 of Pub. L. 102-496.

AMENDMENTS

1993—Subsec. (b)(4). Pub. L. 103-178 substituted “eligible for an annuity under section 2034” for “eligible for an annuity under section 2032”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-178 effective Feb. 1, 1993, see section 202(b) of Pub. L. 103-178, set out as a note under section 2001 of this title.

§ 2053. Voluntary retirement

(a) A participant who is at least 50 years of age and has completed 20 years of service may, on the participant’s application and with the consent of the Director, be retired from the Agency and receive benefits in accordance with the provisions of section 2031 of this title if the participant has not less than 10 years of service with the Agency.

(b) A participant who has at least 25 years of service, ten years of which are with the Agency,

may retire, with the consent of the Director, at any age and receive benefits in accordance with the provisions of section 2031 of this title if the Office of Personnel Management has authorized separation from service voluntarily for Agency employees under section 8336(d)(2) of title 5 with respect to the Civil Service Retirement System or section 8414(b)(1)(B) of such title with respect to the Federal Employees’ Retirement System.

(Pub. L. 88-643, title II, §233, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3225; amended Pub. L. 103-36, §3, June 8, 1993, 107 Stat. 106.)

PRIOR PROVISIONS

A prior section 233 of Pub. L. 88-643, title II, Oct. 13, 1964, 78 Stat. 1048, related to voluntary retirement and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88-643 by section 802 of Pub. L. 102-496.

AMENDMENTS

1993—Pub. L. 103-36 designated existing provisions as subsec. (a) and added subsec. (b).

§ 2054. Discontinued service benefits

(a) Deferred annuity

A participant who separates from the Agency may, upon separation or at any time before the commencement of an annuity under this subchapter, elect—

(1) to have the participant’s contributions to the fund returned to the participant in accordance with section 2071(a) of this title; or

(2) except in a case in which the Director determines that separation was based in whole or in part on the ground of disloyalty to the United States, to leave the contributions in the fund and receive an annuity, computed as prescribed in section 2031 of this title, commencing at age 62.

(b) Refund of contributions if former participant dies before age 62

If a participant who qualifies under subsection (a) of this section to receive a deferred annuity commencing at age 62 dies before reaching age 62, the participant’s contributions to the fund, with interest, shall be paid in accordance with the provisions of section 2071 of this title.

(Pub. L. 88-643, title II, §234, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3225; amended Pub. L. 103-178, title II, §202(a)(10), Dec. 3, 1993, 107 Stat. 2026.)

PRIOR PROVISIONS

A prior section 234 of Pub. L. 88-643, title II, Oct. 13, 1964, 78 Stat. 1048; Pub. L. 97-269, title VI, §608, Sept. 27, 1982, 96 Stat. 1152; Pub. L. 99-335, title V, §501(2), June 6, 1986, 100 Stat. 622, related to discontinued service benefits and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88-643 by section 802 of Pub. L. 102-496.

AMENDMENTS

1993—Subsec. (b). Pub. L. 103-178 substituted “section 2071” for “sections 2071 and 2121”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-178 effective Feb. 1, 1993, see section 202(b) of Pub. L. 103-178, set out as a note under section 2001 of this title.

§ 2055. Mandatory retirement**(a) Involuntary retirement**

(1) **AUTHORITY OF DIRECTOR.**—The Director may, in the Director's discretion, place in a retired status any participant in the system described in paragraph (2).

(2) Paragraph (1) applies with respect to any participant who has not less than 10 years of service with the Agency and who—

(A) has completed at least 25 years of service; or

(B) is at least 50 years of age and has completed at least 20 years of service.

(b) Mandatory retirement for age**(1) In general**

A participant in the system shall be automatically retired from the Agency—

(A) upon reaching age 65, in the case of a participant in the system who is at the Senior Intelligence Service rank of level 4 or above; and

(B) upon reaching age 60, in the case of any other participant in the system.

(2) Effective date of retirement

Retirement under paragraph (1) shall be effective on the last day of the month in which the participant reaches the age applicable to that participant under that paragraph.

(3) Authority for extension

In any case in which the Director determines it to be in the public interest, the Director may extend the mandatory retirement date for a participant under this subsection by a period of not to exceed 5 years.

(c) Retirement benefits

A participant retired under this section shall receive retirement benefits in accordance with section 2031 of this title.

(Pub. L. 88-643, title II, § 235, as added Pub. L. 102-496, title VIII, § 802, Oct. 24, 1992, 106 Stat. 3225; amended Pub. L. 111-259, title II, § 201, Oct. 7, 2010, 124 Stat. 2657.)

PRIOR PROVISIONS

A prior section 235 of Pub. L. 88-643, title II, Oct. 13, 1964, 78 Stat. 1049; Ex. Ord. No. 12443, § 13, Sept. 27, 1983, 48 F.R. 44754; Pub. L. 99-335, title V, § 501(2), June 6, 1986, 100 Stat. 622; Pub. L. 102-183, title III, § 307, Dec. 4, 1991, 105 Stat. 1265, related to mandatory retirement and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88-643 by section 802 of Pub. L. 102-496.

AMENDMENTS

2010—Subsec. (b)(1)(A). Pub. L. 111-259 substituted “who is at the Senior Intelligence Service rank” for “receiving compensation under the Senior Intelligence Service pay schedule at the rate”.

§ 2056. Eligibility for annuity**(a) One-out-of-two requirement**

A participant must complete, within the last two years before any separation from service (except a separation because of death or disability) at least one year of creditable civilian service during which the participant is subject to this subchapter and in a pay status before the

participant or the participant's survivors are eligible for an annuity under this subchapter based on that separation.

(b) Refund of contributions for time not allowed for credit

If a participant (other than a participant separated from the service because of death or disability) fails to meet the service and pay status requirement of subsection (a) of this section, any amounts deducted from the participant's pay during the period for which no eligibility is established based on the separation shall be returned to the participant on the separation.

(c) Exception

Failure to meet the service and pay status requirement of subsection (a) of this section shall not deprive the participant or the participant's survivors of any annuity to which they may be entitled under this subchapter based on a previous separation.

(Pub. L. 88-643, title II, § 236, as added Pub. L. 102-496, title VIII, § 802, Oct. 24, 1992, 106 Stat. 3226.)

PRIOR PROVISIONS

A prior section 236 of Pub. L. 88-643, as added Pub. L. 101-193, title III, § 302(2), Nov. 30, 1989, 103 Stat. 1703, related to eligibility for annuity and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88-643 by section 802 of Pub. L. 102-496.

A prior section 237 of Pub. L. 88-643, title II, formerly § 236, Oct. 13, 1964, 78 Stat. 1049; Pub. L. 91-626, § 4, Dec. 31, 1970, 84 Stat. 1873; Pub. L. 93-31, May 8, 1973, 87 Stat. 65; Pub. L. 99-335, title V, § 501(2), June 6, 1986, 100 Stat. 622, renumbered § 237, Pub. L. 101-193, title III, § 302(1), Nov. 30, 1989, 103 Stat. 1703, related to limitation on number of retirements and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88-643 by section 802 of Pub. L. 102-496.

PART E—LUMP-SUM PAYMENTS**§ 2071. Lump-sum payments****(a) Entitlement to lump-sum credit**

Subject to section 2082(d) of this title and subsection (b) of this section, a participant who—

(1) is separated from the Agency for at least 31 consecutive days and is not transferred to employment covered by another retirement system for Government employees;

(2) files an application with the Director for payment of the lump-sum credit;

(3) is not reemployed in a position in which the participant is subject to this subchapter at the time the participant files the application; and

(4) will not become eligible to receive an annuity under this subchapter within 31 days after filing the application,

is entitled to be paid the lump-sum credit. Receipt of the payment of the lump-sum credit by the former participant voids all annuity rights under this subchapter based on the service on which the lump-sum credit is based, until the former participant is reemployed in service subject to this subchapter.

(b) Conditions for payment of lump-sum credit**(1) In general**

Whenever a former participant becomes entitled to receive payment of the lump-sum

credit under subsection (a) of this section, such lump-sum credit shall be paid to the former participant and to any former spouse or former wife or husband of the former participant in accordance with paragraphs (2) through (4). The former participant's lump-sum credit shall be reduced by the amount of the lump-sum credit payable to any former spouse or former wife or husband.

(2) Pro rata share for former spouse

Unless otherwise expressly provided by any spousal agreement or court order under section 2094(b) of this title, a former spouse of the former participant shall be entitled to receive a share of such participant's lump-sum credit—

(A) if married to the participant throughout the period of creditable service of the participant, equal to 50 percent of such lump-sum credit; or

(B) if not married to the participant throughout such creditable service, equal to a proportion of 50 percent of such lump-sum credit which is the proportion that the number of days of the marriage of the former spouse to the participant during periods of creditable service of such participant bears to the total number of days of such creditable service.

(3) Share for former wife or husband

Payment of the former participant's lump-sum credit shall be subject to the terms of a court order under section 2094(c) of this title concerning any former wife or husband of the former participant if—

(A) the court order expressly relates to any portion of such lump-sum credit; and

(B) payment of the lump-sum credit would extinguish entitlement of such former wife or husband to a survivor annuity under section 2036 of this title or to any portion of the participant's annuity under section 2094(c) of this title.

(4) Notification

A lump-sum credit may be paid to or for the benefit of a former participant—

(A) only upon written notification to (i) the current spouse, if any, (ii) any former spouse, and (iii) any former wife or husband who has a court order covered by paragraph (3); and

(B) only if the express written concurrence of the current spouse has been received by the Director.

This paragraph may be waived under circumstances described in section 2031(b)(1)(D) of this title.

(c) Order of precedence of payment

A lump-sum payment authorized by subsection (d) or (e) of this section 2121(d)¹ of this title and a payment of any accrued and unpaid annuity authorized by subsection (f) of this section shall be paid in the following order of precedence to individuals surviving the participant and alive on the date entitlement to the pay-

¹ So in original. The words "of this section 2121(d)" probably should be "of this section or by section 2121(d)".

ment arises, upon establishment of a valid claim therefor, and such payment bars recovery by any other individual:

(1) To the beneficiary or beneficiaries designated by such participant in a signed and witnessed writing received by the Director before the participant's death. For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed with the Director shall have no force or effect.

(2) If there is no designated beneficiary, to the surviving wife or husband of such participant.

(3) If none of the above, to the child or children of such participant and descendent of deceased children by representation.

(4) If none of the above, to the parents of such participant or the survivor of them.

(5) If none of the above, to the duly appointed executor or administrator of the estate of such participant.

(6) If none of the above, to such other next of kin of such participant as the Director determines to be legally entitled to such payment.

(d) Death of former participant before retirement

(1) In general

Except as provided in paragraph (2), if a former participant eligible for a deferred annuity under section 2054 of this title dies before reaching age 62, such former participant's lump-sum credit shall be paid in accordance with subsection (c) of this section.

(2) Limitation

In any case where there is a surviving former spouse or surviving former wife or husband of such participant who is entitled to a share of such participant's lump-sum credit under paragraphs (2) and (3) of subsection (b) of this section, the lump-sum credit payable under paragraph (1) shall be reduced by the lump-sum credit payable to such former spouse or former wife or husband.

(e) Termination of all annuity rights

If all annuity rights under this subchapter based on the service of a deceased participant or annuitant terminate before the total annuity paid equals the lump-sum credit, the difference shall be paid in accordance with subsection (c) of this section.

(f) Payment of accrued and unpaid annuity when retired participant dies

If a retired participant dies, any annuity accrued and unpaid shall be paid in accordance with subsection (c) of this section.

(g) Termination of survivor annuity

An annuity accrued and unpaid on the termination, except by death, of the annuity of a survivor annuitant shall be paid to that individual. An annuity accrued and unpaid on the death of a survivor annuitant shall be paid in the following order of precedence, and the payment bars recovery by any other individual:

(1) To the duly appointed executor or administrator of the estate of the survivor annuitant.

(2) If there is no executor or administrator, to such next of kin of the survivor annuitant as the Director determines to be legally entitled to such payment, except that no payment shall be made under this paragraph until after the expiration of 30 days from the date of death of the survivor annuitant.

(Pub. L. 88-643, title II, §241, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3226; amended Pub. L. 103-178, title II, §202(a)(11), Dec. 3, 1993, 107 Stat. 2026.)

PRIOR PROVISIONS

A prior section 241 of Pub. L. 88-643, title II, Oct. 13, 1964, 78 Stat. 1049; Pub. L. 94-522, title II, §209, Oct. 17, 1976, 90 Stat. 2471; Ex. Ord. No. 12443, §5, Sept. 27, 1983, 48 F.R. 44752; Pub. L. 99-335, title V, §501(2), June 6, 1986, 100 Stat. 622, related to disposition of contributions and interest in excess of benefits received and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88-643 by section 802 of Pub. L. 102-496.

AMENDMENTS

1993—Subsec. (c). Pub. L. 103-178, §202(a)(11)(A), substituted “A lump-sum payment authorized by subsection (d) or (e) of this section 2121(d) of this title and a payment of any accrued and unpaid annuity authorized by subsection (f) of this section” for “A lump-sum benefit that would have been payable to a participant, former participant, or annuitant, or to a survivor annuitant, authorized by subsection (d) or (e) of this section or by section 2054(b) or 2121(d) of this title”.

Subsecs. (f), (g). Pub. L. 103-178, §202(a)(11)(B), added subsec. (f) and redesignated former subsec. (f) as (g).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-178 effective Feb. 1, 1993, see section 202(b) of Pub. L. 103-178, set out as a note under section 2001 of this title.

PART F—PERIOD OF SERVICE FOR ANNUITIES

§ 2081. Computation of length of service

(a) In general

(1) Crediting service as participant

For the purposes of this subchapter, the period of service of a participant shall be computed from the date on which the participant becomes a participant under this subchapter.

(2) Exclusion of certain periods

In computing the period of service of a participant, all periods of separation from the Agency and so much of any leave of absence without pay as may exceed six months in the aggregate in any calendar year shall be excluded, except leaves of absence while receiving benefits under chapter 81 of title 5 and leaves of absence granted participants while performing active and honorable service in the Armed Forces.

(3) Crediting certain periods of separation

A participant or former participant who returns to Government duty after a period of separation shall have included in the participant or former participant's period of service that part of the period of separation in which the participant or former participant was receiving benefits under chapter 81 of title 5.

(b) Extra credit for periods served at unhealthful posts overseas

(1) Classification of certain posts as unhealthful

The Director may from time to time establish a list of places outside the United States that, by reason of climatic or other extreme conditions, are to be classed as unhealthful posts. Such list shall be established in consultation with the Secretary of State.

(2) Extra credit

Each year of duty at a post on the list established under paragraph (1), inclusive of regular leaves of absence, shall be counted as one and a half years in computing the length of service of a participant under this subchapter for the purpose of retirement. In computing such service, any fractional month shall be treated as a full month.

(3) Coordination with benefits under title 5

Extra credit for service at an unhealthful post may not be credited to a participant who is paid a differential under section 5925 or 5928 of title 5 for the same service.

(Pub. L. 88-643, title II, §251, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3228.)

PRIOR PROVISIONS

A prior section 251 of Pub. L. 88-643, title II, Oct. 13, 1964, 78 Stat. 1050; Pub. L. 94-522, title II, §210, Oct. 17, 1976, 90 Stat. 2471; Pub. L. 99-169, title VII, §702, Dec. 4, 1985, 99 Stat. 1008; Pub. L. 99-335, title V, §501(2), June 6, 1986, 100 Stat. 622, related to computation of length of service and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88-643 by section 802 of Pub. L. 102-496.

§ 2082. Prior service credit

(a) In general

A participant may, subject to the provisions of this section, include in the participant's period of service—

(1) civilian service in the Government before becoming a participant that would be creditable toward retirement under subchapter III of chapter 83 of title 5 (as determined under section 8332(b) of such title); and

(2) honorable active service in the Armed Forces before the date of the separation upon which eligibility for an annuity is based, or honorable active service in the Regular or Reserve Corps of the Public Health Service after June 30, 1960, or as a commissioned officer of the National Oceanic and Atmospheric Administration after June 30, 1961.

(b) Limitations

(1) In general

Except as provided in paragraphs (2) and (3), the total service of any participant shall exclude—

(A) any period of civilian service on or after October 1, 1982, for which retirement deductions or deposits have not been made,

(B) any period of service for which a refund of contributions has been made, or

(C) any period of service for which contributions were not transferred pursuant to subsection (c)(1) of this section;

unless the participant makes a deposit to the fund in an amount equal to the percentages of basic pay received for such service as specified in the table contained in section 8334(c) of title 5, together with interest computed in accordance with section 8334(e) of such title. The deposit may be made in one or more installments (including by allotment from pay), as determined by the Director.

(2) Effect of retirement deductions not made

If a participant has not paid a deposit for civilian service performed before October 1, 1982, for which retirement deductions were not made, such participant's annuity shall be reduced by 10 percent of the deposit described in paragraph (1) remaining unpaid, unless the participant elects to eliminate the service involved for the purpose of the annuity computation.

(3) Effect of refund of retirement contributions

A participant who received a refund of retirement contributions under this or any other retirement system for Government employees covering service for which the participant may be allowed credit under this subchapter may deposit the amount received, with interest computed under paragraph (1). Credit may not be allowed for the service covered by the refund until the deposit is made, except that a participant who—

(A) separated from Government service before October 1, 1990, and received a refund of the participant's retirement contributions covering a period of service ending before October 1, 1990;

(B) is entitled to an annuity under this subchapter (other than a disability annuity) which commences after December 1, 1992; and

(C) does not make the deposit required to receive credit for the service covered by the refund;

shall be entitled to an annuity actuarially reduced in accordance with section 8334(d)(2)(B) of title 5.

(4) Entitlement under another system

Credit toward retirement under the system shall not be allowed for any period of civilian service on the basis of which the participant is receiving (or will in the future be entitled to receive) an annuity under another retirement system for Government employees, unless the right to such annuity is waived and a deposit is made under paragraph (1) covering that period of service, or a transfer is made pursuant to subsection (c) of this section.

(c) Transfer from other Government retirement systems

(1) In general

If an employee who is under another retirement system for Government employees becomes a participant in the system by direct transfer, the Government's contributions (including interest accrued thereon computed in accordance with section 8334(e) of title 5) under such retirement system on behalf of the employee as well as such employee's total contributions and deposits (including interest ac-

crued thereon), except voluntary contributions, shall be transferred to the employee's credit in the fund effective as of the date such employee becomes a participant in the system.

(2) Consent of employee

Each such employee shall be deemed to consent to the transfer of such funds, and such transfer shall be a complete discharge and acquittance of all claims and demands against the other Government retirement fund on account of service rendered before becoming a participant in the system.

(3) Additional contributions; refunds

A participant whose contributions are transferred pursuant to paragraph (1) shall not be required to make additional contributions for periods of service for which full contributions were made to the other Government retirement fund, nor shall any refund be made to any such participant on account of contributions made during any period to the other Government retirement fund at a higher rate than that fixed for employees by section 8334(c) of title 5 for contributions to the fund.

(d) Transfer to other Government retirement systems

(1) In general

If a participant in the system becomes an employee under another Government retirement system by direct transfer to employment covered by such system, the Government's contributions (including interest accrued thereon computed in accordance with section 8334(e) of title 5) to the fund on the participant's behalf as well as the participant's total contributions and deposits (including interest accrued thereon), except voluntary contributions, shall be transferred to the participant's credit in the fund of such other retirement system effective as of the date on which the participant becomes eligible to participate in such other retirement system.

(2) Consent of employee

Each such employee shall be deemed to consent to the transfer of such funds, and such transfer shall be a complete discharge and acquittance of all claims and demands against the fund on account of service rendered before the participant's becoming eligible for participation in that other system.

(e) Prior military service credit

(1) Application to obtain credit

If a deposit required to obtain credit for prior military service described in subsection (a)(2) of this section was not made to another Government retirement fund and transferred under subsection (c)(1) of this section, the participant may obtain credit for such military service, subject to the provisions of this subsection and subsections (f) through (h) of this section, by applying for it to the Director before retirement or separation from the Agency.

(2) Employment starting before, on, or after October 1, 1982

Except as provided in paragraph (3)—

(A) the service of a participant who first became a Federal employee before October 1, 1982, shall include credit for each period of military service performed before the date of separation on which entitlement to an annuity under this subchapter is based, subject to subsection (f) of this section; and

(B) the service of a participant who first becomes a Federal employee on or after October 1, 1982, shall include credit for—

(i) each period of military service performed before January 1, 1957, and

(ii) each period of military service performed after December 31, 1956, and before the separation on which entitlement to an annuity under this subchapter is based, only if a deposit (with interest, if any) is made with respect to that period, as provided in subsection (h) of this section.

(3) Effect of receipt of military retired pay

In the case of a participant who is entitled to retired pay based on a period of military service, the participant's service may not include credit for such period of military service unless the retired pay is paid—

(A) on account of a service-connected disability—

(i) incurred in combat with an enemy of the United States; or

(ii) caused by an instrumentality of war and incurred in the line of duty during a period of war (as defined in section 1101 of title 38); or

(B) under chapter 67¹ of title 10.

(4) Survivor annuity

Notwithstanding paragraph (3), the survivor annuity of a survivor of a participant—

(A) who was awarded retired pay based on any period of military service, and

(B) whose death occurs before separation from the Agency,

shall be computed in accordance with section 8332(c)(3) of title 5.

(f) Effect of entitlement to social security benefits

(1) In general

Notwithstanding any other provision of this section (except paragraph (3) of this subsection) or section 2083 of this title, any military service (other than military service covered by military leave with pay from a civilian position) performed by a participant after December 1956 shall be excluded in determining the aggregate period of service on which an annuity payable under this subchapter to such participant or to the participant's spouse, former spouse, previous spouse, or child is based, if such participant, spouse, former spouse, previous spouse, or child is entitled (or would upon proper application be entitled), at the time of such determination, to monthly old-age or survivors' insurance benefits under section 402 of title 42, based on such participant's wages and self-employment income. If the military service is not excluded under the preceding sentence, but upon attaining age 62,

the participant or spouse, former spouse, or previous spouse becomes entitled (or would upon proper application be entitled) to such benefits, the aggregate period of service on which the annuity is based shall be redetermined, effective as of the first day of the month in which the participant or spouse, former spouse, or previous spouse attains age 62, so as to exclude such service.

(2) Limitation

The provisions of paragraph (1) relating to credit for military service do not apply to—

(A) any period of military service of a participant with respect to which the participant has made a deposit with interest, if any, under subsection (h) of this section; or

(B) the military service of any participant described in subsection (e)(2)(B) of this section.

(3) Effect of entitlement before September 8, 1982

(A) The annuity recomputation required by paragraph (1) shall not apply to any participant who was entitled to an annuity under this subchapter on or before September 8, 1982, or who is entitled to a deferred annuity based on separation from the Agency occurring on or before such date. Instead of an annuity recomputation, the annuity of such participant shall be reduced at age 62 by an amount equal to a fraction of the participant's old-age or survivors' insurance benefits under section 402 of title 42. The reduction shall be determined by multiplying the participant's monthly Social Security benefit by a fraction, the numerator of which is the participant's total military wages and deemed additional wages (within the meaning of section 429 of title 42) that were subject to Social Security deductions and the denominator of which is the total of all the participant's wages, including military wages, and all self-employment income that were subject to Social Security deductions before the calendar year in which the determination month occurs.

(B) The reduction determined in accordance with subparagraph (A) shall not be greater than the reduction that would be required under paragraph (1) if such paragraph applied to the participant. The new formula shall be applicable to any annuity payment payable after October 1, 1982, including annuity payments to participants who had previously reached age 62 and whose annuities had already been recomputed.

(C) For purposes of this paragraph, the term "determination month" means—

(i) the first month for which the participant is entitled to old-age or survivors' insurance benefits (or would be entitled to such benefits upon application therefor); or

(ii) October 1982, in the case of any participant entitled to such benefits for that month.

(g) Deposits paid by survivors

For the purpose of survivor annuities, deposits authorized by subsections (b) and (h) of this section may also be made by the survivor of a participant.

¹ See References in Text note below.

(h) Deposits for periods of military service

(1)(A) Each participant who has performed military service before the date of separation on which entitlement to an annuity under this subchapter is based may pay to the Agency an amount equal to 7 percent of the amount of basic pay paid under section 204 of title 37 to the participant for each period of military service after December 1956; except, the amount to be paid for military service performed beginning on January 1, 1999, through December 31, 2000, shall be as follows:

7.25 percent of basic pay.	January 1, 1999, to December 31, 1999.
7.4 percent of basic pay.	January 1, 2000, to December 31, 2000.

(B) The amount of such payments shall be based on such evidence of basic pay for military service as the participant may provide or, if the Director determines sufficient evidence has not been provided to adequately determine basic pay for military service, such payment shall be based upon estimates of such basic pay provided to the Director under paragraph (4).

(2) Any deposit made under paragraph (1) more than two years after the later of—

(A) October 1, 1983, or

(B) the date on which the participant making the deposit first becomes an employee of the Federal Government,

shall include interest on such amount computed and compounded annually beginning on the date of expiration of the two-year period. The interest rate that is applicable in computing interest in any year under this paragraph shall be equal to the interest rate that is applicable for such year under section 8334(e) of title 5.

(3) Any payment received by the Director under this subsection shall be deposited in the Treasury of the United States to the credit of the fund.

(4) The provisions of section 2031(k) of this title shall apply with respect to such information as the Director determines to be necessary for the administration of this subsection in the same manner that such section applies concerning information described in that section.

(Pub. L. 88-643, title II, §252, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3229; amended Pub. L. 105-33, title VII, §7001(c)(3), Aug. 5, 1997, 111 Stat. 659; Pub. L. 106-346, §101(a) [title V, §505(c)(2)], Oct. 23, 2000, 114 Stat. 1356, 1356A-53.)

REFERENCES IN TEXT

Chapter 67 of title 10, referred to in subsec. (e)(3)(B), was transferred to part II of subtitle E of Title 10, Armed Forces, renumbered as chapter 1223, and amended generally by Pub. L. 103-337, div. A, title XVI, §1662(j)(1), Oct. 5, 1994, 108 Stat. 2998. A new chapter 67 (§1331) of Title 10 was added by section 1662(j)(7) of Pub. L. 103-337.

PRIOR PROVISIONS

A prior section 252 of Pub. L. 88-643, title II, Oct. 13, 1964, 78 Stat. 1050; Pub. L. 91-626, §§5, 6, Dec. 31, 1970, 84 Stat. 1872; Pub. L. 94-522, title II, §211, Oct. 17, 1976, 90 Stat. 2471; Ex. Ord. No. 12443, §§9-11, 15, Sept. 27, 1983, 48 F.R. 44753, 44755; Ex. Ord. No. 12485, July 13, 1984, 49 F.R. 28827; Pub. L. 99-335, title V, §501(2), June 6, 1986, 100 Stat. 622; Pub. L. 102-83, §5(c)(2), Aug. 6, 1991, 105

Stat. 406, related to prior service credit and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88-643 by section 802 of Pub. L. 102-496.

AMENDMENTS

2000—Subsec. (h)(1)(A). Pub. L. 106-346, in introductory provisions, substituted “December 31, 2000” for “December 31, 2002” and in table struck out item at end relating to payment of 7.5 percent of basic pay for service period January 1, 2001, to December 31, 2002.

1997—Subsec. (h)(1). Pub. L. 105-33 amended par. (1) generally. Prior to amendment, par. (1) read as follows: “Each participant who has performed military service before the date of separation on which entitlement to an annuity under this subchapter is based may pay to the Agency an amount equal to 7 percent of the amount of basic pay paid under section 204 of title 37 to the participant for each period of military service after December 1956. The amount of such payments shall be based on such evidence of basic pay for military service as the participant may provide or, if the Director determines sufficient evidence has not been provided to adequately determine basic pay for military service, such payment shall be based upon estimates of such basic pay provided to the Director under paragraph (4).”

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-346 effective upon the close of calendar year 2000 and applicable thereafter, see section 101(a) [title V, §505(i)] of Pub. L. 106-346, set out as a note under section 8334 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 effective Oct. 1, 1997, see section 7001(f) of Pub. L. 105-33, set out as a note under section 8334 of Title 5, Government Organization and Employees.

§ 2083. Credit for service while on military leave**(a) General rule**

A participant who, during the period of any war or of any national emergency as proclaimed by the President or declared by the Congress, leaves the participant's position in the Agency to enter military service shall not be considered, for purposes of this subchapter, as separated from the participant's position in the Agency by reason of such military service, unless the participant applies for and receives a refund of contributions under this subchapter. Such a participant may not be considered as retaining such position in the Agency after December 31, 1956, or upon the expiration of five years of such military service, whichever is later.

(b) Waiver of contributions

Except to the extent provided under section 2082(e) or 2082(h) of this title, contributions shall not be required covering periods of leave of absence from the Agency granted a participant while performing active service in the Armed Forces.

(Pub. L. 88-643, title II, §253, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3234.)

PRIOR PROVISIONS

A prior section 253 of Pub. L. 88-643, title II, Oct. 13, 1964, 78 Stat. 1052; Pub. L. 99-335, title V, §501(2), June 6, 1986, 100 Stat. 622, related to credit for service while on military leave and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88-643 by section 802 of Pub. L. 102-496.

PART G—MONEYS

§ 2091. Estimate of appropriations needed**(a) Estimates of annual appropriations**

The Director shall prepare the estimates of the annual appropriations required to be made to the fund.

(b) Actuarial valuations

The Director shall cause to be made actuarial valuations of the fund at such intervals as the Director determines to be necessary, but not less often than every five years.

(c) Changes in law affecting actuarial status of fund

Any statute which authorizes—

- (1) new or increased benefits payable from the fund under this subchapter, including annuity increases other than under section 2131 of this title;
- (2) extension of the coverage of this subchapter to new groups of employees; or
- (3) increases in pay on which benefits are computed;

is deemed to authorize appropriations to the fund in order to provide funding for the unfunded liability created by that statute, in 30 equal annual installments with interest computed at the rate used in the then most recent valuation of the system and with the first payment thereof due as of the end of the fiscal year in which such new or liberalized benefit, extension of coverage, or increase in pay is effective.

(d) Authorization

There is hereby authorized to be appropriated to the fund for each fiscal year such amounts as may be necessary to meet the amount of normal cost for each year that is not met by contributions under section 2021(a) of this title.

(e) Unfunded liability; credit allowed for military service

There is hereby authorized to be appropriated to the fund for each fiscal year such sums as may be necessary to provide the amount equivalent to—

- (1) interest on the unfunded liability computed for that year at the interest rate used in the then most recent valuation of the system; and
- (2) that portion of disbursement for annuities for that year that the Director estimates is attributable to credit allowed for military service,

less an amount determined by the Director to be appropriate to reflect the value of the deposits made to the credit of the fund under section 2082(h) of this title.

(Pub. L. 88-643, title II, §261, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3234.)

PRIOR PROVISIONS

A prior section 261 of Pub. L. 88-643, title II, Oct. 13, 1964, 78 Stat. 1052; Pub. L. 94-522, title I, §102, Oct. 17, 1976, 90 Stat. 2467; Ex. Ord. No. 12443, §12, Sept. 27, 1983, 48 F.R. 44754; Pub. L. 99-335, title V, §501(2), (3), June 6, 1986, 100 Stat. 622, related to estimate of appropriations needed and was set out as a note under section 403 of

this title prior to the general amendment of Pub. L. 88-643 by section 802 of Pub. L. 102-496.

§ 2092. Investment of moneys in fund

The Director may, with the approval of the Secretary of the Treasury, invest from time to time in interest-bearing securities of the United States such portions of the fund as in the Director's judgment may not be immediately required for the payment of annuities, cash benefits, refunds, and allowances from the fund. The income derived from such investments shall be credited to and constitute a part of the fund.

(Pub. L. 88-643, title II, §262, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3235.)

PRIOR PROVISIONS

A prior section 262 of Pub. L. 88-643, title II, Oct. 13, 1964, 78 Stat. 1052, related to investment of moneys in the fund and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88-643 by section 802 of Pub. L. 102-496.

§ 2093. Payment of benefits**(a) Annuities stated as annual amounts**

Each annuity is stated as an annual amount, $\frac{1}{12}$ of which, rounded to the next lowest dollar, constitutes the monthly rate payable on the first business day of the month after the month or other period for which it has accrued.

(b) Commencement of annuity**(1) Commencement of annuity for participants generally**

Except as otherwise provided in paragraph (2), the annuity of a participant who has met the eligibility requirements for an annuity shall commence on the first day of the month after separation from the Agency or after pay ceases and the service and age requirements for title to an annuity are met.

(2) Exceptions

The annuity of—

- (A) a participant involuntarily separated from the Agency;
- (B) a participant retiring under section 2051 of this title due to a disability; and
- (C) a participant who serves 3 days or less in the month of retirement;

shall commence on the day after separation from the Agency or the day after pay ceases and the service and age or disability requirements for title to annuity are met.

(3) Other annuities

Any other annuity payable from the fund commences on the first day of the month after the occurrence of the event on which payment thereof is based.

(c) Termination of annuity

An annuity payable from the fund shall terminate—

- (1) in the case of a retired participant, on the day death or any other terminating event provided by this subchapter occurs; or
- (2) in the case of a former spouse or a survivor, on the last day of the month before death or any other terminating event occurs.

(d) Application for survivor annuities

The annuity to a survivor shall become effective as otherwise specified but shall not be paid until the survivor submits an application for such annuity, supported by such proof of eligibility as the Director may require. If such application or proof of eligibility is not submitted during the lifetime of an otherwise eligible individual, no annuity shall be due or payable to the individual's estate.

(e) Waiver of annuity

An individual entitled to an annuity from the fund may decline to accept all or any part of the annuity by submitting a signed waiver to the Director. The waiver may be revoked in writing at any time. Payment of the annuity waived may not be made for the period during which the waiver is in effect.

(f) Limitations**(1) Application before 115th anniversary**

No payment shall be made from the fund unless an application for benefits based on the service of the participant is received by the Director before the 115th anniversary of the participant's birth.

(2) Application within 30 years

Notwithstanding paragraph (1), after the death of a participant or retired participant, no benefit based on that participant's service may be paid from the fund unless an application for the benefit is received by the Director within 30 years after the death or other event which gives rise to eligibility for the benefit.

(g) Withholding of State income tax from annuities**(1) Agreements with States**

The Director shall, in accordance with this subsection, enter into an agreement with any State within 120 days of a request for agreement from the proper State official. The agreement shall provide that the Director shall withhold State income tax in the case of the monthly annuity of any annuitant who voluntarily requests, in writing, such withholding. The amounts withheld during any calendar quarter shall be held in the Fund¹ and disbursed to the States during the month following that calendar quarter.

(2) Limitation on multiple requests

An annuitant may have in effect at any time only one request for withholding under this subsection, and an annuitant may not have more than two such requests during any one calendar year.

(3) Change in State designation

Subject to paragraph (2), an annuitant may change the State designated by that annuitant for purposes of having withholdings made, and may request that the withholdings be remitted in accordance with such change. An annuitant also may revoke any request of that annuitant for withholding. Any change in the State designated or revocation is effective on the first day of the month after the month in which the

request or the revocation is processed by the Director, but in no event later than on the first day of the second month beginning after the day on which such request or revocation is received by the Director.

(4) General provisions

This subsection does not give the consent of the United States to the application of a statute which imposes more burdensome requirements of the United States than on employers generally, or which subjects the United States or any annuitant to a penalty or liability because of this subsection. The Director may not accept pay from a State for services performed in withholding State income taxes from annuities. Any amount erroneously withheld from an annuity and paid to a State by the Director shall be repaid by the State in accordance with regulations prescribed by the Director.

(5) "State" defined

For the purpose of this subsection, the term "State" includes the District of Columbia and any territory or possession of the United States.

(Pub. L. 88-643, title II, §263, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3235.)

PRIOR PROVISIONS

A prior section 263 of Pub. L. 88-643, title II, Oct. 13, 1964, 78 Stat. 1052; Pub. L. 97-269, title VI, §609, Sept. 27, 1982, 96 Stat. 1153; Pub. L. 99-335, title V, §501(2), June 6, 1986, 100 Stat. 622, related to attachment of moneys and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88-643 by section 802 of Pub. L. 102-496.

§ 2094. Attachment of moneys**(a) Exemption from legal process**

Except as provided in subsections (b), (c), and (e) of this section, none of the moneys mentioned in this subchapter shall be assignable either in law or equity, or be subject to execution, levy, attachment, garnishment, or other legal process, except as otherwise may be provided by Federal laws.

(b) Payment to former spouses under court order or spousal agreement

In the case of any participant, former participant, or retired participant who has a former spouse who is covered by a court order or who is a party to a spousal agreement—

(1) any right of the former spouse to any annuity under section 2032(a) of this title in connection with any retirement or disability annuity of the participant, and the amount of any such annuity;

(2) any right of the former spouse of a participant or retired participant to a survivor annuity under section 2032(b) or 2032(c) of this title, and the amount of any such annuity; and

(3) any right of the former spouse of a former participant to any payment of a lump-sum credit under section 2071(b) of this title, and the amount of any such payment;

shall be determined in accordance with that spousal agreement or court order, if and to the extent expressly provided for in the terms of the

¹ So in original. Probably should not be capitalized.

spousal agreement or court order that are not inconsistent with the requirements of this subchapter.

(c) Other payments under court orders

Payments under this subchapter that would otherwise be made to a participant, former participant, or retired participant based upon that participant's service shall be paid, in whole or in part, by the Director to another individual if and to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation.

(d) Prospective payments; bar to recovery

(1) Subsections (b) and (c) of this section apply only to payments made under this subchapter for periods beginning after the date of receipt by the Director of written notice of such decree, order, or agreement and such additional information and documentation as the Director may require.

(2) Any payment under subsection (b) or (c) of this section to an individual bars recovery by any other individual.

(e) Allotments

An individual entitled to an annuity from the fund may make allotments or assignments of amounts from such annuity for such purposes as the Director considers appropriate.

(Pub. L. 88-643, title II, §264, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3237; amended Pub. L. 103-178, title II, §202(a)(12), Dec. 3, 1993, 107 Stat. 2027.)

PRIOR PROVISIONS

A prior section 264 of Pub. L. 88-643, as added Pub. L. 94-522, title II, §212, Oct. 17, 1976, 90 Stat. 2471, related to recovery of payments and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88-643 by section 802 of Pub. L. 102-496. See section 2095 of this title.

AMENDMENTS

1993—Subsec. (b)(2). Pub. L. 103-178, §202(a)(12)(A), inserted “and” at end.

Subsec. (b)(3). Pub. L. 103-178, §202(a)(12)(B), substituted “, and the amount of any such payment;” for “and to any payment of a return of contributions under section 2054(a) of this title; and”.

Subsec. (b)(4). Pub. L. 103-178, §202(a)(12)(C), struck out par. (4) which read as follows: “any right of the former spouse of a participant or former participant to a lump-sum payment or additional annuity payable from a voluntary contribution account under section 2121 of this title;”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-178 effective Feb. 1, 1993, see section 202(b) of Pub. L. 103-178, set out as a note under section 2001 of this title.

§ 2095. Recovery of payments

Recovery of payments under this subchapter may not be made from an individual when, in the judgment of the Director, the individual is without fault and recovery would be against equity and good conscience. Withholding or recovery of money payable pursuant to this subchapter on account of a certification or payment

made by a former employee of the Agency in the discharge of the former employee's official duties may be made if the Director certifies that the certification or payment involved fraud on the part of the former employee.

(Pub. L. 88-643, title II, §265, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3237; amended Pub. L. 103-178, title II, §202(a)(13), Dec. 3, 1993, 107 Stat. 2027.)

AMENDMENTS

1993—Pub. L. 103-178 substituted “subchapter” for “chapter” in two places.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-178 effective Feb. 1, 1993, see section 202(b) of Pub. L. 103-178, set out as a note under section 2001 of this title.

PART H—RETIRED PARTICIPANTS RECALLED, REINSTATED, OR REAPPOINTED IN AGENCY OR REEMPLOYED IN GOVERNMENT

§ 2111. Recall

(a) Authority to recall

The Director may, with the consent of a retired participant, recall that participant to service in the Agency whenever the Director determines that such recall is in the public interest.

(b) Pay of retired participant while serving

A retired participant recalled to duty in the Agency under subsection (a) of this section or reinstated or reappointed in accordance with section 2051(b)¹ of this title shall, while so serving, be entitled, in lieu of the retired participant's annuity, to the full basic pay of the grade in which the retired participant is serving. During such service, the retired participant shall make contributions to the fund in accordance with section 2021 of this title.

(c) Recomputation of annuity

When the retired participant reverts to retired status, the annuity of the retired participant shall be redetermined in accordance with section 2031 of this title.

(Pub. L. 88-643, title II, §271, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3238.)

PRIOR PROVISIONS

A prior section 271 of Pub. L. 88-643, title II, Oct. 13, 1964, 78 Stat. 1052, related to recalled participants and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88-643 by section 802 of Pub. L. 102-496.

WAIVER OF DUAL COMPENSATION PROVISIONS

For waiver of application of the dual compensation reduction provisions of this section for temporary employees during an emergency, see Ex. Ord. No. 13236, Nov. 27, 2001, 66 F.R. 59671, set out as a note under section 2141 of this title.

§ 2112. Reemployment

A participant retired under this subchapter shall not, by reason of that retired status, be barred from employment in Federal Government service in any appointive position for which the participant is qualified.

¹ So in original. Probably should be section “2051(c)”.

(Pub. L. 88-643, title II, §272, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3238.)

PRIOR PROVISIONS

A prior section 272 of Pub. L. 88-643, title II, Oct. 13, 1964, 78 Stat. 1053; Pub. L. 99-335, title V, §501(2), June 6, 1986, 100 Stat. 622, related to reemployed participants and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88-643 by section 802 of Pub. L. 102-496.

§ 2113. Reemployment compensation

(a) Deduction from basic pay

An annuitant who has retired under this subchapter and who is reemployed in the Federal Government service in any appointive position (either on a part-time or full-time basis) shall be entitled to receive the annuity payable under this subchapter, but there shall be deducted from the annuitant's basic pay a sum equal to the annuity allocable to the period of actual employment.

(b) Recovery of overpayments

In the event of an overpayment under this section, the amount of the overpayment shall be recovered by withholding the amount involved from the basic pay payable to such reemployed annuitant or from any other moneys, including the annuitant's annuity, payable in accordance with this subchapter.

(c) Deposit in fund

Sums deducted from the basic pay of a reemployed annuitant under this section shall be deposited in the Treasury of the United States to the credit of the fund.

(Pub. L. 88-643, title II, §273, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3238.)

PRIOR PROVISIONS

A prior section 273 of Pub. L. 88-643, title II, Oct. 13, 1964, 78 Stat. 1053; Pub. L. 99-335, title V, §501(2), June 6, 1986, 100 Stat. 622, related to reemployment compensation and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88-643 by section 802 of Pub. L. 102-496.

WAIVER OF DUAL COMPENSATION PROVISIONS

For waiver of application of the dual compensation reduction provisions of this section for temporary employees during an emergency, see Ex. Ord. No. 13236, Nov. 27, 2001, 66 F.R. 59671, set out as a note under section 2141 of this title.

PART I—VOLUNTARY CONTRIBUTIONS

§ 2121. Voluntary contributions

(a) Authority for voluntary contributions

(1) In general

Under such regulations as may be prescribed by the Director, a participant may voluntarily contribute additional sums in multiples of one percent of the participant's basic pay, but not in excess of 10 percent of such basic pay.

(2) Interest

The voluntary contribution account in each case is the sum of unrefunded contributions, plus interest—

(A) for periods before January 1, 1985, at 3 percent a year; and

(B) for periods on or after January 1, 1985, at the rate computed under section 8334(e) of title 5,

compounded annually to the date of election under subsection (b) of this section or the date of payment under subsection (d) of this section.

(b) Treatment of voluntary contributions

Effective on the date of retirement and at the election of the participant, the participant's account shall be—

(1) returned in a lump sum;

(2) used to purchase an additional life annuity;

(3) used to purchase an additional life annuity for the participant and to provide for a cash payment on the participant's death to a beneficiary; or

(4) used to purchase an additional life annuity for the participant and a life annuity commencing on the participant's death payable to a beneficiary, with a guaranteed return to the beneficiary or the beneficiary's legal representative of an amount equal to the cash payment referred to in paragraph (3).

In the case of a benefit provided under paragraph (3) or (4), the participant shall notify the Director in writing of the name of the beneficiary of the cash payment or life annuity to be paid upon the participant's death.

(c) Value of benefits

The benefits provided by subsection (b)(2), (3), or (4) of this section shall be actuarially equivalent in value to the payment provided for in subsection (b)(1) of this section and shall be calculated upon such tables of mortality as may be from time to time prescribed for this purpose by the Director.

(d) Lump-sum payment

A voluntary contribution account shall be paid in a lump sum at such time as the participant dies or separates from the Agency without entitlement to an annuity. In the case of death, the account shall be paid in the order of precedence specified in section 2071(c) of this title.

(e) Benefits in addition to other benefits

Any benefit payable to a participant or to the participant's beneficiary with respect to the additional contributions provided under this section shall be in addition to benefits otherwise provided under this subchapter.

(Pub. L. 88-643, title II, §281, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3239.)

PRIOR PROVISIONS

A prior section 281 of Pub. L. 88-643, title II, Oct. 13, 1964, 78 Stat. 1053; Ex. Ord. No. 12443, §3, Sept. 27, 1983, 48 F.R. 44751; Pub. L. 99-335, title V, §501(2), June 6, 1986, 100 Stat. 622, related to voluntary contributions and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88-643 by section 802 of Pub. L. 102-496.

PART J—COST-OF-LIVING ADJUSTMENT OF ANNUITIES

§ 2131. Cost-of-living adjustment of annuities

(a) In general

Each annuity payable from the fund shall be adjusted as follows:

(1) Each cost-of-living annuity increase under this section shall be identical to the corresponding percentage increase under section 8340(b) of title 5.

(2) A cost-of-living increase made under paragraph (1) shall become effective under this section on the effective date of each such increase under section 8340(b) of title 5. Except as provided in subsection (b) of this section, each such increase shall be applied to each annuity payable from the fund which has a commencing date not later than the effective date of the increase.

(b) Eligibility

Eligibility for an annuity increase under this section shall be governed by the commencing date of each annuity payable from the fund as of the effective date of an increase, except as follows:

(1) The first cost-of-living increase (if any) made under subsection (a) of this section to an annuity which is payable from the fund to a participant who retires, to the surviving spouse, former spouse, or previous spouse of a participant who dies in service, or to the surviving spouse, former spouse, previous spouse, or insurable interest designee of a deceased annuitant whose annuity has not been increased under this subsection or subsection (a) of this section, shall be equal to the product (adjusted to the nearest $\frac{1}{40}$ of one percent) of—

(A) $\frac{1}{12}$ of the applicable percent change computed under subsection (a) of this section, multiplied by

(B) the number of months (not to exceed 12 months, counting any portion of a month as a month)—

(i) for which the annuity was payable from the fund before the effective date of the increase, or

(ii) in the case of a surviving spouse, former spouse, previous spouse, or insurable interest designee of a deceased annuitant whose annuity has not been so increased, since the annuity was first payable to the deceased annuitant.

(2) Effective from its commencing date, an annuity payable from the fund to an annuitant's survivor (other than a child entitled to an annuity under section 2031(d) of this title) shall be increased by the total percentage increase the annuitant was receiving under this section at death.

(3) For purposes of computing the annuity of a child under section 2031(d) of this title that commences after October 31, 1969, the dollar amounts specified in section 2031(d)(3) of this title shall each be increased by the total percentage increases allowed and in force under this section on or after such day and, in the case of a deceased annuitant, the percentages specified in that section shall be increased by

the total percent allowed and in force to the annuitant under this section on or after such day.

(c) Limitation

An annuity increase provided by this section may not be computed on any additional annuity purchased at retirement by voluntary contributions.

(d) Rounding to next lower dollar

The monthly annuity installment, after adjustment under this section, shall be rounded to the next lowest dollar, except that such installment shall, after adjustment, reflect an increase of at least \$1.

(e) Limitation on maximum amount of annuity

(1) In general

An annuity shall not be increased by reason of an adjustment under this section to an amount which exceeds the greater of—

(A) the maximum pay payable for GS-15 30 days before the effective date of the adjustment under this section; or

(B) the final pay (or average pay, if higher) of the participant with respect to whom the annuity is paid, increased by the overall annual average percentage adjustments (compounded) in the rates of pay of the General Schedule under subchapter I of chapter 53 of title 5 during the period—

(i) beginning on the date on which the annuity commenced (or, in the case of a survivor of the retired participant, the date on which the participant's annuity commenced), and

(ii) ending on the effective date of the adjustment under this section.

(2) "Pay" defined

For purposes of paragraph (1), the term "pay" means the rate of salary or basic pay as payable under any provision of law, including any provision of law limiting the expenditure of appropriated funds.

(Pub. L. 88-643, title II, §291, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3240; amended Pub. L. 103-178, title II, §202(a)(14), Dec. 3, 1993, 107 Stat. 2027.)

REFERENCES IN TEXT

GS-15, referred to in subsec. (e)(1)(A), probably means GS-15 of the General Schedule which is set out under section 5332 of Title 5, Government Organization and Employees.

PRIOR PROVISIONS

A prior section 291 of Pub. L. 88-643, title II, Oct. 13, 1964, 78 Stat. 1054; Pub. L. 90-539, Sept. 30, 1968, 82 Stat. 902; Pub. L. 91-185, §5, Dec. 30, 1969, 83 Stat. 849; Pub. L. 93-210, §1(a), Dec. 28, 1973, 87 Stat. 908; Pub. L. 94-361, title VIII, §801(b), July 14, 1976, 90 Stat. 929; Ex. Ord. No. 12326, §4, Sept. 30, 1981, 46 F.R. 48889; Ex. Ord. No. 12443, §§6, 14, Sept. 27, 1983, 48 F.R. 44752, 44754; Pub. L. 99-335, title V, §501(3), June 6, 1986, 100 Stat. 622, related to cost-of-living adjustment of annuities and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88-643 by section 802 of Pub. L. 102-496.

AMENDMENTS

1993—Subsec. (b)(2). Pub. L. 103-178 struck out "or section 2052(c) of this title" after "section 2031(d) of this title".

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-178 effective Feb. 1, 1993, see section 202(b) of Pub. L. 103-178, set out as a note under section 2001 of this title.

DELAY IN COST-OF-LIVING ADJUSTMENTS DURING FISCAL YEARS 1994, 1995, AND 1996

Any cost-of-living increase scheduled to take effect during fiscal year 1994, 1995, or 1996 under this section delayed until first day of third calendar month after date such increase would otherwise take effect, see section 11001 of Pub. L. 103-66, set out as a note under section 8340 of Title 5, Government Organization and Employees.

PART K—CONFORMITY WITH CIVIL SERVICE RETIREMENT SYSTEM

§ 2141. Authority to maintain existing areas of conformity between Civil Service and Central Intelligence Agency Retirement and Disability Systems

(a) Presidential authority

(1) Conformity to CSRS by Executive order

Whenever the President determines that it would be appropriate for the purpose of maintaining existing conformity between the Civil Service Retirement and Disability System and the Central Intelligence Agency Retirement and Disability System with respect to substantially identical provisions, the President may, by Executive order, extend to current or former participants in the Central Intelligence Agency Retirement and Disability System, or to their survivors, a provision of law enacted after January 1, 1975, which—

(A) amends subchapter III of chapter 83 of title 5 and is applicable to civil service employees generally; or

(B) otherwise affects current or former participants in the Civil Service Retirement and Disability System, or their survivors.

(2) Extension to CIARDS

Any such order shall extend such provision of law so that it applies in like manner with respect to such Central Intelligence Agency Retirement and Disability System participants, former participants, or survivors.

(3) Legal status

Any such order shall have the force and effect of law.

(4) Effective date

Any such order may be given retroactive effect to a date not earlier than the effective date of the corresponding provision of law applicable to employees under the Civil Service Retirement System.

(b) Effect of Executive order

Provisions of an Executive order issued pursuant to this section shall modify, supersede, or render inapplicable, as the case may be, to the extent inconsistent therewith—

(1) provisions of law enacted before the effective date of the Executive order; and

(2) any prior provision of an Executive order issued under this section.

(Pub. L. 88-643, title II, §292, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3241.)

PRIOR PROVISIONS

A prior section 292 of Pub. L. 88-643, as added Pub. L. 94-522, title II, §213, Oct. 17, 1976, 90 Stat. 2471, 2472, related to authority to maintain existing areas of conformity between Civil Service and Central Intelligence Agency Retirement and Disability Systems and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88-643 by section 802 of Pub. L. 102-496.

OPEN ENROLLMENT SEASON FOR PARTICIPANTS IN THE CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

The Director to provide an open enrollment period for employee participants in the Central Intelligence Agency Retirement and Disability System to elect the Federal Employees' Retirement System, see Ex. Ord. No. 13105, §2, Nov. 2, 1998, 63 F.R. 60201, set out as a note under section 4067 of Title 22, Foreign Relations and Intercourse.

EX. ORD. NO. 13236. WAIVER OF DUAL COMPENSATION PROVISIONS

Ex. Ord. No. 13236, Nov. 27, 2001, 66 F.R. 59671, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 292 of the Central Intelligence Agency Retirement Act of 1964 [Central Intelligence Agency Retirement Act], as amended (50 U.S.C. 2141), and in order to conform the Central Intelligence Agency Retirement and Disability System to the Civil Service Retirement and Disability System, it is hereby ordered as follows:

SECTION 1. The Director of Central Intelligence may waive the application of the dual compensation reduction provisions of sections 271 and 273 of the Central Intelligence Agency Retirement Act (50 U.S.C. 2111 and 2113) for an employee serving on a temporary basis, but only if, and for so long as, the authority is necessary due to an emergency involving a direct threat to life or property or other unusual circumstances. Employees who receive both salary and annuity pursuant to this authority may not earn additional retirement benefits during this period of employment. This authority may be delegated as appropriate.

SEC. 2. Nothing contained in this order is intended to create, nor does it create, any right, benefit, or privilege, substantive or procedural, enforceable at law by a party against the United States, its agencies, officers, employees, or any other person.

GEORGE W. BUSH.

APPLICABILITY OF FEDERAL PHYSICIANS COMPARABILITY ALLOWANCE AMENDMENTS OF 2000

The Director of Central Intelligence to issue regulations to reflect application of sections 3(a) and 3(b) of Pub. L. 106-571, amending sections 8331 and 8339 of Title 5, Government Organization and Employees, to the Central Intelligence Agency Retirement and Disability System, see Ex. Ord. No. 13297, §3(b), Apr. 23, 2003, 68 F.R. 22566, set out as a note under section 4067 of Title 22, Foreign Relations and Intercourse.

§ 2142. Thrift Savings Plan participation

(a) Eligibility for Thrift Savings Plan

Participants in the system shall be deemed to be employees for the purposes of section 8351 of title 5.

(b) Management of Thrift Savings Plan accounts by Director

Subsections (k) and (m) of section 8461 of title 5 shall apply with respect to contributions made by participants to the Thrift Savings Fund under section 8351 of such title and to earnings

attributable to the investment of such contributions.

(Pub. L. 88-643, title II, §293, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3242.)

PRIOR PROVISIONS

A prior section 293 of Pub. L. 88-643, as added Pub. L. 99-335, title V, §504, June 6, 1986, 100 Stat. 623, related to Thrift Savings Fund participation by participants in the Central Intelligence Agency Retirement and Disability System and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88-643 by section 802 of Pub. L. 102-496.

§ 2143. Alternative forms of annuities

(a) Authority for alternative form of annuity

The Director shall prescribe regulations under which any participant who has a life-threatening affliction or other critical medical condition may, at the time of retiring under this subchapter (other than under section 2051 of this title), elect annuity benefits under this section instead of any other benefits under this subchapter (including any survivor benefits under this subchapter) based on the service of the participant creditable under this subchapter.

(b) Basis for alternative forms of annuity

The regulations and alternative forms of annuity shall, to the maximum extent practicable, meet the requirements prescribed in section 8343a of title 5.

(c) Lump-sum credit

Any lump-sum credit provided pursuant to an election under subsection (a) of this section shall not preclude an individual from receiving other benefits provided under that subsection.

(d) Submission of regulations to congressional intelligence committees

The Director shall submit the regulations prescribed under subsection (a) of this section to the congressional intelligence committees before the regulations take effect.

(Pub. L. 88-643, title II, §294, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3242; amended Pub. L. 103-66, title XI, §11002(c), Aug. 10, 1993, 107 Stat. 409.)

PRIOR PROVISIONS

A prior section 294 of Pub. L. 88-643, as added Pub. L. 99-335, title V, §505, June 6, 1986, 100 Stat. 624, related to alternative forms of annuities and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88-643 by section 802 of Pub. L. 102-496.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103-66 substituted “any participant who has a life-threatening affliction or other critical medical condition” for “a participant”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 effective Oct. 1, 1994, and applicable with respect to any annuity commencing on or after that date, see section 11002(d) of Pub. L. 103-66, set out as a note under section 8343a of Title 5, Government Organization and Employees.

§ 2144. Payments from CIARDS fund for portions of certain Civil Service Retirement System annuities

The amount of the increase in any annuity that results from the application of section 403r of this title, if and when such increase is based on an individual's overseas service as an employee of the Central Intelligence Agency, shall be paid from the fund.

(Pub. L. 88-643, title II, §295, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3242.)

PRIOR PROVISIONS

A prior section 295 of Pub. L. 88-643, as added Pub. L. 101-193, title III, §307(b), Nov. 30, 1989, 103 Stat. 1707, related to payments from CIARDS fund for portions of certain Civil Service Retirement System annuities and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88-643 by section 802 of Pub. L. 102-496.

SUBCHAPTER III—PARTICIPATION IN FEDERAL EMPLOYEES' RETIREMENT SYSTEM

§ 2151. Application of Federal Employees' Retirement System to Agency employees

(a) General rule

Except as provided in subsections (b) and (c) of this section, all employees of the Agency, any of whose service after December 31, 1983, is employment for the purpose of title II of the Social Security Act [42 U.S.C. 401 et seq.] and chapter 21 of title 26, shall be subject to chapter 84 of title 5.

(b) Exception for pre-1984 employees

Participants in the Central Intelligence Agency Retirement and Disability System who were participants in such system on or before December 31, 1983, and who have not had a break in service in excess of one year since that date, are not subject to chapter 84 of title 5 without regard to whether they are subject to title II of the Social Security Act [42 U.S.C. 401 et seq.].

(c) Nonapplicability of FERS to certain employees

(1) The provisions of chapter 84 of title 5 shall not apply with respect to—

(A) any individual who separates, or who has separated, from Federal Government service after having been an employee of the Agency subject to subchapter II of this chapter; and

(B) any employee of the Agency having at least 5 years of civilian service which was performed before January 1, 1987, and is creditable under subchapter II of this chapter (determined without regard to any deposit or re-deposit requirement under subchapter III of chapter 83 of title 5, or under subchapter II of this chapter, or any requirement that the individual become subject to such subchapter or to subchapter II of this chapter after performing the service involved).

(2) Paragraph (1) shall not apply with respect to an individual who has elected under regulations prescribed under section 2157 of this title to become subject to chapter 84 of title 5 to the extent provided in such regulations.

(3) An individual described in paragraph (1) shall be deemed to be an individual excluded under section 8402(b)(2) of title 5.

(d) Election to become subject to FERS

An employee who is designated as a participant in the Central Intelligence Agency Retirement and Disability System after December 31, 1987, pursuant to section 2013 of this title may elect to become subject to chapter 84 of title 5. Such election—

(1) shall not be effective unless it is made during the six-month period beginning on the date on which the employee is so designated;

(2) shall take effect beginning with the first pay period beginning after the date of the election; and

(3) shall be irrevocable.

(e) Special rules

The application of the provisions of chapter 84 of title 5 to an employee referred to in subsection (a) of this section shall be subject to the exceptions and special rules provided in this subchapter. Any provision of that chapter which is inconsistent with a special rule provided in this subchapter shall not apply to such employees.

(Pub. L. 88-643, title III, §301, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3243.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a) and (b), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 301 of Pub. L. 88-643, as added Pub. L. 99-335, title V, §506, June 6, 1986, 100 Stat. 624; amended Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100-453, title V, §502, Sept. 29, 1988, 102 Stat. 1909, related to application of Federal Employees' Retirement System to Agency employees and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88-643 by section 802 of Pub. L. 102-496.

§ 2152. Special rules relating to section 2013 criteria employees

(a) In general

Except as otherwise provided in this section, in the application of chapter 84 of title 5 to an employee of the Agency who is subject to such chapter and is designated by the Director under the criteria prescribed in section 2013 of this title, such employee shall be treated for purposes of determining such employee's retirement benefits and obligations under such chapter as if the employee were a law enforcement officer (as defined in section 8401(17) of title 5).

(b) Voluntary and mandatory retirement

The provisions of sections 2053 and 2055 of this title shall apply to employees referred to in subsection (a) of this section, except that the retirement benefits shall be determined under chapter 84 of title 5.

(c) Recall

(1) Except as provided in paragraph (2), section 2111 of this title shall apply to an employee referred to in subsection (a) of this section.

(2) Contributions during recall service shall be made as provided in section 8422 of title 5.

(3) When an employee recalled under this subsection reverts to a retired status, the annuity of such employee shall be redetermined under the provisions of chapter 84 of title 5.

(Pub. L. 88-643, title III, §302, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3244.)

PRIOR PROVISIONS

A prior section 302 of Pub. L. 88-643, as added Pub. L. 99-335, title V, §506, June 6, 1986, 100 Stat. 625, related to special rules relating to employees designated under criteria of former section 203 of Pub. L. 88-643 and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88-643 by section 802 of Pub. L. 102-496.

§ 2153. Special rules for other employees for service abroad

(a) Special computation rule

Notwithstanding any provision of chapter 84 of title 5, the annuity under subchapter II of such chapter of a retired employee of the Agency who is not designated under section 2152(a) of this title and who has served abroad as an employee of the Agency after December 31, 1986, shall be computed as provided in subsection (b) of this section.

(b) Computation

(1) Service abroad

The portion of the annuity relating to such service abroad shall be computed as provided in section 8415(d) of title 5.

(2) Other service

The portions of the annuity relating to other creditable service shall be computed as provided in section 8415 of such title that is applicable to such service under the conditions prescribed in chapter 84 of such title.

(Pub. L. 88-643, title III, §303, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3244.)

PRIOR PROVISIONS

A prior section 303 of Pub. L. 88-643, as added Pub. L. 99-335, title V, §506, June 6, 1986, 100 Stat. 626, related to special rules for other employees for service abroad and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88-643 by section 802 of Pub. L. 102-496.

§ 2154. Special rules for former spouses

(a) General rule

Except as otherwise specifically provided in this section, the provisions of chapter 84 of title 5 shall apply in the case of an employee of the Agency who is subject to chapter 84 of title 5 and who has a former spouse (as defined in section 8401(12) of title 5) or a qualified former spouse.

(b) Definitions

For purposes of this section:

(1) Employee

The term “employee” means an employee of the Agency who is subject to chapter 84 of title 5, including an employee referred to in section 2152(a) of this title.

(2) Qualified former spouse

The term “qualified former spouse” means a former spouse of an employee or retired employee who—

(A) in the case of a former spouse whose divorce from such employee became final on or before December 4, 1991, was married to such employee for not less than 10 years during periods of the employee’s service which are creditable under section 8411 of title 5, at least 5 years of which were spent outside the United States by both the employee and the former spouse during the employee’s service with the Agency; and

(B) in the case of a former spouse whose divorce from such employee becomes final after December 4, 1991, was married to such employee for not less than 10 years during periods of the employee’s service which are creditable under section 8411 of title 5, at least 5 years of which were spent by the employee outside the United States during the employee’s service with the Agency or otherwise in a position the duties of which qualified the employee for designation by the Director under the criteria prescribed in section 2013 of this title.

(3) Pro rata share

The term “pro rata share” means the percentage that is equal to (A) the number of days of the marriage of the qualified former spouse to the employee during the employee’s periods of creditable service under chapter 84 of title 5, divided by (B) the total number of days of the employee’s creditable service.

(4) Spousal agreement

The term “spousal agreement” means an agreement between an employee, former employee, or retired employee and such employee’s spouse or qualified former spouse that—

(A) is in writing, is signed by the parties, and is notarized;

(B) has not been modified by court order; and

(C) has been authenticated by the Director.

(5) Court order

The term “court order” means any court decree of divorce, annulment or legal separation, or any court order or court-approved property settlement agreement incident to such court decree of divorce, annulment, or legal separation.

(c) Entitlement of qualified former spouse to retirement benefits**(1) Entitlement****(A) In general**

Unless otherwise expressly provided by a spousal agreement or court order governing disposition of benefits payable under subchapter II or V of chapter 84 of title 5, a qualified former spouse of an employee is en-

titled to a share (determined under subparagraph (B)) of all benefits otherwise payable to such employee under subchapter II or V of chapter 84 of title 5.

(B) Amount of share

The share referred to in subparagraph (A) equals—

(i) 50 percent, if the qualified former spouse was married to the employee throughout the entire period of the employee’s service which is creditable under chapter 84 of title 5;¹ or

(ii) a pro rata share of 50 percent, if the qualified former spouse was not married to the employee throughout such creditable service.

(2) Annuity supplement

The benefits payable to an employee under subchapter II of chapter 84 of title 5 shall include, for purposes of this subsection, any annuity supplement payable to such employee under sections 8421 and 8421a of such title.

(3) Disqualification upon remarriage before age 55

A qualified former spouse shall not be entitled to any benefit under this subsection if, before the commencement of any benefit, the qualified former spouse remarries before becoming 55 years of age.

(4) Commencement and termination**(A) Commencement**

The benefits of a qualified former spouse under this subsection commence on the later of—

(i) the day on which the employee upon whose service the benefits are based becomes entitled to the benefits; or

(ii) the first day of the second month beginning after the date on which the Director receives written notice of the court order or spousal agreement, together with such additional information or documentation as the Director may prescribe.

(B) Termination

The benefits of the qualified former spouse and the right thereto terminate on—

(i) the last day of the month before the qualified former spouse remarries before 55 years of age or dies; or

(ii) the date on which the retired employee’s benefits terminate (except in the case of benefits subject to paragraph (5)(B)).

(5) Payments to retired employees**(A) Calculation of survivor annuity**

Any reduction in payments to a retired employee as a result of payments to a qualified former spouse under this subsection shall be disregarded in calculating—

(i) the survivor annuity for any spouse, former spouse (qualified or otherwise), or other survivor under chapter 84 of title 5, and

(ii) any reduction in the annuity of the retired employee to provide survivor bene-

¹ So in original. Probably should be title “5”.

fits under subsection (d) of this section or under sections² 8442 or 8445 of title 5.

(B) Reduction in basic pay upon recall to service

If a retired employee whose annuity is reduced under paragraph (1) is recalled to service under section 2152(c) of this title, the basic pay of that annuitant shall be reduced by the same amount as the annuity would have been reduced if it had continued. Amounts equal to the reductions under this subparagraph shall be deposited in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund.

(6) Special rules for disability annuitants

Notwithstanding paragraphs (1) and (4), in the case of any qualified former spouse of a disability annuitant—

(A) the annuity of such former spouse shall commence on the date on which the employee would qualify, on the basis of the employee's creditable service, for benefits under subchapter II of chapter 84 of title 5 or on the date on which the disability annuity begins, whichever is later; and

(B) the amount of the annuity of the qualified former spouse shall be calculated on the basis of the benefits for which the employee would otherwise qualify under subchapter II of chapter 84 of such title.

(7) Pro rata share in case of employees transferred to FERS

Notwithstanding paragraph (1)(B), in the case of an employee who has elected to become subject to chapter 84 of title 5, the share of such employee's qualified former spouse shall equal the sum of—

(A) 50 percent of the employee's annuity under subchapter III of chapter 83 of title 5 or under subchapter II of this chapter (computed in accordance with section 302(a) of the Federal Employees' Retirement System Act of 1986 or section 2157 of this title), multiplied by the proportion that the number of days of marriage during the period of the employee's creditable service before the effective date of the election to transfer bears to the employee's total creditable service before such effective date; and

(B) if applicable, 50 percent of the employee's benefits under chapter 84 of title 5 or section 2152(a) of this title (computed in accordance with section 302(a) of the Federal Employees' Retirement System Act of 1986 or section 2157 of this title), multiplied by the proportion that the number of days of marriage during the period of the employee's creditable service on and after the effective date of the election to transfer bears to the employee's total creditable service after such effective date.

(8) Treatment of pro rata share under title 26

For purposes of title 26, payments to a qualified former spouse under this subsection shall be treated as income to the qualified former spouse and not to the employee.

(d) Qualified former spouse survivor benefits

(1) Entitlement

(A) In general

Subject to an election under section 8416(a) of title 5, and unless otherwise expressly provided by any spousal agreement or court order governing survivor benefits payable under this subsection to a qualified former spouse, such former spouse is entitled to a share, determined under subparagraph (B), of all survivor benefits that would otherwise be payable under subchapter IV of chapter 84 of title 5 to an eligible surviving spouse of the employee.

(B) Amount of share

The share referred to in subparagraph (A) equals—

(i) 100 percent, if the qualified former spouse was married to the employee throughout the entire period of the employee's service which is creditable under chapter 84 of title 5; or

(ii) a pro rata share of 100 percent, if the qualified former spouse was not married to the employee throughout such creditable service.

(2) Survivor benefits

(A) The survivor benefits payable under this subsection to a qualified former spouse shall include the amount payable under section 8442(b)(1)(A) of title 5 and any supplementary annuity under section 8442(f) of such title that would be payable if such former spouse were a widow or widower entitled to an annuity under such section.

(B) Any calculation under section 8442(f) of title 5 of the supplementary annuity payable to a widow or widower of an employee referred to in section 2152(a) of this title shall be based on an "assumed CIARDS annuity" rather than an "assumed CSRS annuity" as stated in section 8442(f) of such title. For the purpose of this subparagraph, the term "assumed CIARDS annuity" means the amount of the survivor annuity to which the widow or widower would be entitled under subchapter II of this chapter based on the service of the deceased annuitant determined under section 8442(f)(5) of such title.

(3) Disqualification upon remarriage before age 55

A qualified former spouse shall not be entitled to any benefit under this subsection if, before commencement of any benefit, the qualified former spouse remarries before becoming 55 years of age.

(4) Restoration

If the survivor annuity payable under this subsection to a surviving qualified former spouse is terminated because of remarriage before becoming age 55, the annuity shall be restored at the same rate commencing on the date such remarriage is dissolved by death, divorce, or annulment, if—

(A) such former spouse elects to receive this survivor annuity instead of any other survivor benefit to which such former spouse

²So in original. Probably should be "section".

may be entitled under subchapter IV of chapter 84 of title 5, or under another retirement system for Government employees by reason of the remarriage; and

(B) any lump sum paid on termination of the annuity is returned to the Civil Service Retirement and Disability Fund.

(5) Modification of court order or spousal agreement

A modification in a court order or spousal agreement to adjust a qualified former spouse's share of the survivor benefits shall not be effective if issued after the retirement or death of the employee, former employee, or annuitant, whichever occurs first.

(6) Effect of termination of qualified former spouse's entitlement

After a qualified former spouse of a retired employee remarries before becoming age 55 or dies, the reduction in the retired employee's annuity for the purpose of providing a survivor annuity for such former spouse shall be terminated. The annuitant may elect, in a signed writing received by the Director within 2 years after the qualified former spouse's remarriage or death, to continue the reduction in order to provide or increase the survivor annuity for such annuitant's spouse. The annuitant making such election shall pay a deposit in accordance with the provisions of section 8418 of title 5.

(7) Pro rata share in case of employees transferred to FERS

Notwithstanding paragraph (1)(B), in the case of an employee who has elected to become subject to chapter 84 of title 5, the share of such employee's qualified former spouse to survivor benefits shall equal the sum of—

(A) 50 percent of the employee's annuity under subchapter III of chapter 83 of title 5 or under subchapter II of this chapter (computed in accordance with section 302(a) of the Federal Employees' Retirement System Act of 1986 or section 2157 of this title), multiplied by the proportion that the number of days of marriage during the period of the employee's creditable service before the effective date of the election to transfer bears to the employee's total creditable service before such effective date; and

(B) if applicable—

(i) 50 percent of the employee's annuity under chapter 84 of title 5 or section 2152(a) of this title (computed in accordance with section 302(a) of the Federal Employees' Retirement System Act of 1986 or section 2157 of this title), plus

(ii) the survivor benefits referred to in subsection (d)(2)(A) of this section,

multiplied by the proportion that the number of days of marriage during the period of the employee's creditable service on and after the effective date of the election to transfer bears to the employee's total creditable service after such effective date.

(e) Qualified former spouse Thrift Savings Plan benefit

(1) Entitlement

(A) In general

Unless otherwise expressly provided by a spousal agreement or court order governing disposition of the balance of an account in the Thrift Savings Fund under subchapter III of chapter 84 of title 5, a qualified former spouse of an employee is entitled to a share (determined under subparagraph (B)) of the balance in the employee's account in the Thrift Savings Fund on the date the divorce of the qualified former spouse and employee becomes final.

(B) Amount of share

The share referred to in subparagraph (A) equals 50 percent of the employee's account balance in the Thrift Savings Fund that accrued during the period of marriage. For purposes of this subsection, the employee's account balance shall not include the amount of any outstanding loan.

(2) Payment of benefit

(A) Time of payment

The entitlement of a qualified former spouse under paragraph (1) shall be effective on the date the divorce of the qualified former spouse and employee becomes final. The qualified former spouse's benefit shall be payable after the date on which the Director receives the divorce decree or any applicable court order or spousal agreement, together with such additional information or documentation as the Director may require.

(B) Method of payment

The qualified former spouse's benefit under this subsection shall be paid in a lump sum.

(C) Limitation

A spousal agreement or court order may not provide for payment to a qualified former spouse under this subsection of an amount that exceeds the employee's account balance in the Thrift Savings Fund.

(D) Death of qualified former spouse

If the qualified former spouse dies before payment of the benefit provided under this subsection, such payment shall be made to the estate of the qualified former spouse.

(E) Bar to recovery

Any payment under this subsection to an individual bars recovery by any other individual.

(3) Closed account

No payment under this subsection may be made by the Director if the date on which the divorce becomes final is after the date on which the total amount of the employee's account balance has been withdrawn or transferred, or the date on which an annuity contract has been purchased, in accordance with section 8433 of title 5.

(f) Preservation of rights of qualified former spouses

An employee may not make an election or modification of election under section 8417 or 8418 of title 5, or other section relating to the employee's annuity under subchapter II of chapter 84 of title 5, that would diminish the entitlement of a qualified former spouse to any benefit granted to such former spouse by this section or by court order or spousal agreement.

(g) Payment of share of lump-sum credit

Whenever an employee or former employee becomes entitled to receive the lump-sum credit under section 8424(a) of title 5, a share (determined under subsection (c)(1)(B) of this section) of that lump-sum credit shall be paid to any qualified former spouse of such employee, unless otherwise expressly provided by any spousal agreement or court order governing disposition of the lump-sum credit involved.

(h) Payment to qualified former spouses under court order or spousal agreement

In the case of any employee or retired employee who has a qualified former spouse who is covered by a court order or who is a party to a spousal agreement—

(1) any right of the qualified former spouse to any retirement benefits under subsection (c) of this section and to any survivor benefits under subsection (d) of this section, and the amount of any such benefits;

(2) any right of the qualified former spouse to any Thrift Savings Plan benefit under subsection (e) of this section, and the amount of any such benefit; and

(3) any right of the qualified former spouse to any payment of a lump-sum credit under subsection (g) of this section, and the amount of any such payment;

shall be determined in accordance with that spousal agreement or court order, if and to the extent expressly provided for in the terms of the spousal agreement or court order that are not inconsistent with the requirements of this section.

(i) Applicability of CIARDS former spouse benefits

(1) Except as provided in paragraph (2), in the case of an employee who has elected to become subject to chapter 84 of title 5, the provisions of sections 2034 and 2035 of this title shall apply to such employee's former spouse (as defined in section 2002(a)(4) of this title) who would otherwise be eligible for benefits under sections 2034 and 2035 of this title but for the employee having elected to become subject to such chapter.

(2) For the purposes of computing such former spouse's benefits under sections 2034 and 2035 of this title—

(A) the retirement benefits shall be equal to the amount determined under subsection (c)(7)(A) of this section; and

(B) the survivor benefits shall be equal to 55 percent of the full amount of the employee's annuity computed in accordance with section 302(a) of the Federal Employees' Retirement System Act of 1986 or regulations prescribed under section 2157 of this title.

(3) Benefits provided pursuant to this subsection shall be payable from the Central Intelligence Agency Retirement and Disability Fund.

(Pub. L. 88-643, title III, §304, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3244; amended Pub. L. 103-178, title II, §202(a)(15), Dec. 3, 1993, 107 Stat. 2027.)

REFERENCES IN TEXT

Section 302(a) of the Federal Employees' Retirement System Act of 1986, referred to in subsecs. (c)(7)(A), (B), (d)(7)(A), (B)(i), and (i)(2)(B), is section 302(a) of Pub. L. 99-335, which is set out as a note under section 8331 of Title 5, Government Organization and Employees.

PRIOR PROVISIONS

A prior section 304 of Pub. L. 88-643, as added Pub. L. 99-335, title V, §506, June 6, 1986, 100 Stat. 626; amended Pub. L. 100-178, title IV, §402(b)(2), Dec. 2, 1987, 101 Stat. 1014; Pub. L. 102-183, title III, §309(a), Dec. 4, 1991, 105 Stat. 1266, related to special rules for former spouses and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88-643 by section 802 of Pub. L. 102-496.

AMENDMENTS

1993—Subsec. (i)(1). Pub. L. 103-178 substituted “section 2002(a)(4)” for “section 2002(a)(3)”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-178 effective Feb. 1, 1993, see section 202(b) of Pub. L. 103-178, set out as a note under section 2001 of this title.

§ 2155. Administrative provisions**(a) Finality of decisions of Director**

Section 2011(c) of this title shall apply in the administration of chapter 84 of title 5 with respect to employees of the Agency.

(b) Exception

Notwithstanding subsection (a) of this section, section 8461(e) of title 5 shall apply with respect to employees of the Agency who are not participants in the Central Intelligence Agency Retirement and Disability System and are not designated under section 2152(a) of this title.

(Pub. L. 88-643, title III, §305, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3251.)

PRIOR PROVISIONS

A prior section 305 of Pub. L. 88-643, as added Pub. L. 99-335, title V, §506, June 6, 1986, 100 Stat. 627, related to administrative provisions and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88-643 by section 802 of Pub. L. 102-496.

§ 2156. Regulations**(a) Requirement**

The Director shall prescribe in regulations appropriate procedures to carry out this subchapter. Such regulations shall be prescribed in consultation with the Director of the Office of Personnel Management and the Executive Director of the Federal Retirement Thrift Investment Board.

(b) Congressional review

The Director shall submit regulations prescribed under subsection (a) of this section to

the congressional intelligence committees before they take effect.

(Pub. L. 88-643, title III, §306, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3251.)

PRIOR PROVISIONS

A prior section 306 of Pub. L. 88-643, as added Pub. L. 99-335, title V, §506, June 6, 1986, 100 Stat. 628, related to regulations and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88-643 by section 802 of Pub. L. 102-496.

§ 2157. Transition regulations

(a) Regulations

The Director shall prescribe regulations providing for the transition from the Central Intelligence Agency Retirement and Disability System to the Federal Employees' Retirement System provided in chapter 84 of title 5 in a manner consistent with sections 301 through 304 of the Federal Employees' Retirement System Act of 1986.

(b) Congressional review

The Director shall submit regulations prescribed under subsection (a) of this section to the congressional intelligence committees before they take effect.

(Pub. L. 88-643, title III, §307, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3251.)

REFERENCES IN TEXT

Sections 301 through 304 of the Federal Employees' Retirement System Act of 1986, referred to in subsec. (a), are sections 301 to 304 of Pub. L. 99-335, which amended section 3121 of Title 26, Internal Revenue Code, and section 410 of Title 42, The Public Health and Welfare, and enacted provisions set out as a note under section 8331 of Title 5, Government Organization and Employees.

PRIOR PROVISIONS

A prior section 307 of Pub. L. 88-643, as added Pub. L. 99-335, title V, §506, June 6, 1986, 100 Stat. 628, related to transition provisions and regulations and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88-643 by section 802 of Pub. L. 102-496.

CHAPTER 39—SPOILS OF WAR

Sec.	
2201.	Transfers of spoils of war.
2202.	Prohibition on transfers to countries which support terrorism.
2203.	Report on previous transfers.
2204.	Definitions.
2205.	Construction.

§ 2201. Transfers of spoils of war

(a) Eligibility for transfer

Spoils of war in the possession, custody, or control of the United States may be transferred to any other party, including any government, group, or person, by sale, grant, loan or in any other manner, only to the extent and in the same manner that property of the same type, if otherwise owned by the United States, may be so transferred.

(b) Terms and conditions

Any transfer pursuant to subsection (a) of this section shall be subject to all of the terms, con-

ditions, and requirements applicable to the transfer of property of the same type otherwise owned by the United States.

(Pub. L. 103-236, title V, §552, Apr. 30, 1994, 108 Stat. 482.)

SHORT TITLE

Section 551 of Pub. L. 103-236 provided that: "This part [part B (§§551-556) of title V of Pub. L. 103-236, enacting this chapter] may be cited as the 'Spoils of War Act of 1994'."

§ 2202. Prohibition on transfers to countries which support terrorism

Spoils of war in the possession, custody, or control of the United States may not be transferred to any country determined by the Secretary of State, for purposes of section 2780 of title 22, to be a nation whose government has repeatedly provided support for acts of international terrorism.

(Pub. L. 103-236, title V, §553, Apr. 30, 1994, 108 Stat. 482.)

§ 2203. Report on previous transfers

Not later than 90 days after April 30, 1994, the President shall submit to the appropriate congressional committees a report describing any spoils of war obtained subsequent to August 2, 1990 that were transferred to any party, including any government, group, or person, before April 30, 1994. Such report shall be submitted in unclassified form to the extent possible.

(Pub. L. 103-236, title V, §554, Apr. 30, 1994, 108 Stat. 482.)

§ 2204. Definitions

As used in this chapter—

(1) the term "appropriate congressional committees" means the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives, or, where required by law for certain reporting purposes, the Select Committee on Intelligence of the Senate and the Select¹ Committee on Intelligence of the House of Representatives;

(2) the term "enemy" means any country, government, group, or person that has been engaged in hostilities, whether or not lawfully authorized, with the United States;

(3) the term "person" means—

(A) any natural person;

(B) any corporation, partnership, or other legal entity; and

(C) any organization, association, or group; and

(4) the term "spoils of war" means enemy movable property lawfully captured, seized, confiscated, or found which has become United States property in accordance with the laws of war.

(Pub. L. 103-236, title V, §555, Apr. 30, 1994, 108 Stat. 482.)

§ 2205. Construction

Nothing in this chapter shall apply to—

¹ So in original. Probably should be preceded by "Permanent".